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was no longer in a position to arrest in its initial stages a development tantamount to a transference of hegemony in Europe. Shock tactics and weekend surprises, as facets of a policy with clearly limited and at first, apparently, not unreasonable ends, proved superior to the cumbrous machinery of the Covenant and Locarno Treaties.

This policy was strengthened by skilful use of the strategy of diversion, which enabled the powers of the Axis, and later of the Triangle, working in parallel and probably concerted action, to restrict the status quo powers to a choice between passive submission to apparently minor treaty infractions or the risk of a major war (or, to formulate the alternative in the idiom of less cautious observers, of calling the bluff of two powers which at that time were far from being prepared for such a contingency). The cumulative effect of these unilateral acts was to injure grievously the prestige of the European democracies, to increase the insecurity of the smaller powers, and in general, to annihilate belief in collective action and in the pledged word of statesmen.

The adaptability of the methods employed by the expansionist powers became evident in the Spanish War, when their intervention on behalf of the rebels was thinly shielded behind the strange phenomenon defined by Mr. Noel-Baker as 'the totalitarian volunteers'. From the beginning, it was scarcely possible to doubt that the war in Spain was an international war. As early as autumn, 1936, a note from the Portuguese Government, which had no Republican leanings, contained the remarkable passage: 'Why should we deceive each other? The civil war in Spain is an international war.'

Had the Covenant been applied both in letter and spirit, even a civil war would have come within the competence of the League. Under Paragraph 2 of Article 11, each member of the League was entitled to bring to the notice of the Assembly or Council 'any circumstance whatever affecting international peace or the good understandings between nations upon which peace depends'. Still more clearly was the League the appropriate organ, once the incontestable facts of foreign intervention were officially admitted by League Members. In view, however, of the disinclination of Germany and Italy to participate in any collective action under the aegis of the League, the powers set up machinery, completely unconnected with Geneva, under the non-intervention agreements.

The anomaly of such an arrangement has been accurately stated by Professor Lauterpacht in Oppenheim's *International Law* (vol. I, 1948):

'In as much as Italy and Germany undertook not to supply

the rebellious forces with munitions of war, these agreements consisted in an undertaking on the part of certain powers to refrain from committing an international illegality in consideration of the promise of other powers to refrain from acting in a manner in which they were entitled—and according to some, legally bound—to act.'

Assuming that the aims of the Covenant could be secured through the establishment of a separate organisation, and that international delinquencies could be prevented by paring down the discretionary powers of all governments concerned, it could be argued that these laudable ends merited the recourse even to extraordinary procedures. When the new course was inaugurated, it was maintained by the protagonists of non-interventionist policy that the aim of this device was to restore the civil character of the war, an objective which the League, had it been concerned with the matter, would also have been bound to pursue. Soon, however, the weight of the argument was shifted, and it was suggested that the purpose of non-intervention was 'to neutralise and localise this war and to prevent it spreading to Europe as a whole' (Mr. Eden in the House of Commons, November 1, 1937).

It is possible to contend that there is a close similarity between a policy which aims at preventing the extension of a war, and one which is directed at the restoration of its civil character. Nevertheless, there remains the significant difference between endeavours to eliminate an international conflict as such, by means of reducing it to a civil war proper, and efforts tending to localise an international war. The latter objective has repeatedly been attained in balance of power systems; the former falls within the scope of a collective system proper. When, during a later phase of the Spanish War, the limitation of the war area could only be achieved at the price of practically unlimited intervention on behalf of the insurgents, this new halt between the rule of force and the rule of law, euphemistically termed collective neutrality, collapsed as completely as its predecessors. The net result of this policy was the acquisition of new strategic positions by the expansionist powers.

Whereas in this instance some members of the League tried to placate their self-respect and public opinion on the plea that the fact of aggression was doubtful in the case of intervention in a civil war, they could not use so convenient an excuse in the model case of the Sino-Japanese War. Here the aggressor acted openly, without observing any of the European rules of etiquette. It was impossible either to doubt the identity of the aggressor or the international character of the war. Yet the result was about as negative as in the case of the Spanish War.

Although the Chinese appeal to the League expressly referred to Article 17 of the Covenant, and was therefore indirectly based on Articles 12 to 16, the only direct action taken by League members in the autumn of 1936 was to subscribe to a pious resolution in which they assured China of their 'moral support'. Again, it was left to a conference of the interested powers, outside the orbit of the League, to take any further action that they thought advisable.

It was remarkable to find the Assembly condoning its inactivity by reference to paragraph 3 of Article 3 of the Covenant which expressly stated the competence of the Assembly to deal 'with any matter within the sphere of action of the League or affecting the peace of the world'. Neither this Article, nor the corresponding Article defining the powers of the Council (Paragraph 4 of Article 4) nor Article 11, could possibly lend itself to the interpretation that it limited or superseded the more specific obligations undertaken by members of the League under Articles 12 to 17 of the Covenant.

What China had to expect from the Asian member of the Triangle had been outlined by the Japanese Foreign Minister in January, 1939 with the explicitness which marked the diplomacy of this rival League':

'As regards the present China affair, what Japan desires is a creation of a new order which has to secure permanent peace in East Asia; that is to say, the construction of a new East Asia upon an ethical foundation, in which Japan, Manchukuo and China, while each fully preserving her independence and individuality, will stand united and linked together for active collaboration and mutual aid along the lines of political, economic and cultural activities. It is the firm conviction of the Japanese Government that such a new order is not only absolutely necessary for the existence and healthy development of Japan, Manchukuo and China, but also conducive to the real peace and well-being of the whole world.'

The incorporation of Austria into Germany in 1938 demonstrated to perfection the dynamic tactics upon which the Axis had relied in Spain. The League members limited themselves to merely verbal protests. They had developed a guilt complex as the result of the attitude they had adopted in 1919 towards the principle of national self-determination when Austria and Germany had desired to unite and again in 1931, when the Western powers had vetoed the contemplated Austro-German customs union.

The success of the move invited its repetition in Czechoslovakia, the barrier blocking the political expansion of Germany in Eastern and South-Eastern Europe. Again, the principle of national self-determination served as pretext.³ Whatever merit this doctrine may

³ See below, p. 624 *et seq.*

possess, it was amazing that Hitler was not once reminded that he was hardly entitled to base claims on this principle.

The principle of national self-determination may be described as a liberal conception, originating as it does from the religious settlements of the sixteenth and seventeenth centuries which had been based on the principle of a limited religious self-determination. It may also be contended that it is a Bolshevist idea, if one bears in mind the use made of it by the Soviet Union, both at Brest-Litovsk and on subsequent occasions. But it was hard to define it as a National Socialist principle, if the conception of the superiority of the Nordic race formed an intrinsic feature of this '*Weltanschauung*'. Even granting that the argument is dialectical, and that there is free and universal access to the Wilsonian tenets, there remains the problem of the admissibility of selecting only one point out of fourteen, without being called to order on the ground that Wilson's Fourteen Points stand and fall as a whole.

In spite of the fact that the Minorities Treaty concluded with Czechoslovakia provided for its revision through the League of Nations, machinery for the settlement of an impending conflict was again improvised outside the League. As the disastrous failures of the Runciman mission and of the Munich Agreement are by now proverbial, this interlude between an independent Czechoslovakia and the temporary establishment of the German Protectorates in this area merits attention today because of the anomaly apparent, even from the angle of power politics, in the Munich Settlement.*

The situation before Munich did not even faintly resemble a balance of power. Practically the whole world was united against two, or at the most, three countries. Nevertheless, these latter scored points to an extent which in a system of power politics normally can be attained only as the fruits of victory in war. The position of inequality in strength and resources, however, was converted into one of formal equality through resort to the principle of the artificial balance, created, in this instance, by the exclusion from the Conference room of one greater power and of one disputant, both of whom belonged to the same side of the 'balance'. The deficiency in resources and power on the one side was more than counter-balanced by the other's face-value estimation of its opponents' strength, however erroneous this might ultimately have proved. Thus the basis for a settlement was provided by the assumed or real readiness of the one side to begin a world war for the fulfilment of apparently limited objectives and the willingness of the other to accept the settlement on conditions which were not in its own favour.

A further illustration of this policy was provided by the Italian invasion of Albania. In this instance, the initial discrepancy between a community system proper and the decision of the Conference of Ambassadors to grant to one Member of the League a special sphere of influence and political predominance in the country of a co-member of the same League should be borne in mind. It exceeded in kind the discrepancy between the virtual protectorate subsequently established by Italy over Albania and the overt annexation of the country after Italy's nominee as King of Albania had proved less pliable than his sponsor had expected.

THE DE FACTO REVISION OF THE COVENANT

What is the common denominator of these events which, although distinct from one another, were strangely alike in their effect upon the League? During the first decade of the collective system, the status quo powers were paramount. So long as they were strong enough to prevent unilateral treaty denunciations and resort to armed force as a means of change, the collective system appeared to function. Disturbances of tranquillity were exceptional, and the mere absence of war was mistaken for peace. Public opinion and 'experts' were deluded into assuming that a collective system could function without reliable machinery for peaceful change and without the application of the principle of reciprocity either to disarmament or rearmament. The maintenance of the status quo, equivalent to French hegemony on the Continent, was mistaken for an effective League of Nations.

As the potentially expansionist powers came to realise the situation, they proceeded along the psychological line of least resistance, which led, on the grounds of redress of alleged injustices, to modifications of the existing political status at first regarded by the *beati possidentes* as peripheral and unimportant. At this stage the reappearance of the 'have not' States on the world chessboard evoked an almost sympathetic response in those statesmen to whom the conception of a collective system evidently appeared to be a chimera. It was hoped that the increasing strength of nations such as Italy, Germany and Japan might effectively contribute to the establishment of a new balance system and, incidentally, prove a useful counterpoise to the Soviet Union.

Possibly this was not a conscious policy, but merely the expression of undue complacency. It has also been called a manifestation of a pacifism so true to principle that it did not allow even a menace to vital political and strategical points to justify a preventive major

war. All these interpretations are permissible; the verdict as to the motives, however, is one of not proven. Whatever the reasons were, the effect of these policies was to condone the attempts at empire-building made by the totalitarian late-comers in the imperialist arena.

The impact of this development on the League of Nations was profound. The Covenant was based on the conception of the indivisibility of peace (Par. 1 of the Preamble; Par. 3 of Article 3; Par. 4 of Article 4; Articles 11 and 17) and on the assumption that a violation of the Articles enumerated in Article 16 could be redressed if the League members were willing jointly to apply economic pressure. In the course of the process described above, there was an increasing tendency for the centre of gravity to shift from indivisible to individual peace. Statesmen, with considerable support from public opinion, reached the conclusion that it was simpler, safer and less costly not to obstruct the paths of the expansionist powers, but to rearm to the best of their abilities and resources in order to divert aggression to a more vulnerable victim, and, for the rest, to hope for the best.

As Neville Chamberlain said in the House of Commons on February 22, 1938, 'If I am right, as I am confident I am, in saying that the League as constituted today is unable to provide collective security for anybody, then I say we must not try to delude ourselves, and, still more, we must not try to delude small weak nations into thinking that they will be protected by the League against aggression and acting accordingly, when we know that nothing of the kind can be expected.'

The repercussions of this attitude upon the smaller States, the 'consumers of collective security', had the effect of electric shocks. No longer could these States safely rely on the support of the more powerful status quo powers. Their anxieties were voiced by the then Foreign Minister of Sweden, one of the most loyal of League members, as follows: 'In present circumstances I think the situation necessitates our reckoning both with the League functioning according to the provisions of its Covenant at a critical moment and being prepared for it breaking up into conflicting coalitions. We must, in this respect, reserve our freedom of action.'

Again, according to a Swiss Memorandum of April 29, 1938, Switzerland 'will continue to collaborate with the League in all questions in which her status as a neutral country is not involved; she considers herself entitled to ask that her absolute neutrality be respected within the framework of the League'. In the same document the Swiss State lay down a policy of complete non-alignment with any one of the great powers.

such a line, and one of *rapprochement* towards the expansionist powers with dubious results.

The common denominator of the whole development may be described as a process of *de facto* revision of the League Covenant. Nations still professed their moral concern for international peace, even subscribed to pious resolutions, offered their mediation in accordance with Article 11 and were prepared to resort to war for certain objectives considered vital in the national interest. Yet it could no longer be expected that, irrespective of such considerations, League members would fulfil their obligations under Articles 12 to 16 of the Covenant. This attitude found clear expression in the Declaration made on behalf of the British Government in the Sixth Committee of the 1938 Assembly :

‘(I) The circumstances in which occasion for international action under Article 16 may arise, the possibility of taking such action and the nature of the action to be taken cannot be determined in advance. In consequence, while the right of any member of the League to take any measures of the kind contemplated by Article 16 remains intact, no additional obligation exists to take such measures.

‘(II) There is, however, a general obligation to consider in consultation with other members of the League whether, and if so how far, it is possible in any given case to apply the measures contemplated by Article 16 and what steps, if any, can be taken in common to fulfil the objects of that Article.

‘(III) In the course of such consultation each member of the League would be the judge of the extent to which its own position would allow it to participate in any measure that might be proposed, and in doing so it would no doubt be influenced by the extent to which other members were prepared to take action.

‘(IV) The foregoing propositions do not in any way derogate from the principle, which remains intact, that a resort to war, whether immediately affecting any members of the League or not, is a matter of concern to the whole League and is not one to which the members are entitled to adopt an attitude of indifference.’

It is possible to argue that such a *de facto* revision is a strange hybrid between fact and law. Yet, the reverse process is quite familiar to international lawyers. In a gradual transformation, usages of long standing crystallise into customary law, passing through innumerable stages whose distinguishing features are almost imperceptible. Although it would be quite erroneous to construe each infringement of international law as a sign of its modification, the development outlined above presented a continuity which it was difficult to ignore, and there is little doubt that even an international treaty may fall into *desuetude*. With the completion of such a process, *de facto* revision has taken place.

In order to forestall such an interpretation, in the British Declaration cited above the express reservation was made that 'the text, structure, and juridical effect of the Covenant remain unaltered', and the less rigid interpretation of the obligations of League members under the Covenant was justified by reference to 'the special circumstances existing at the present time'. Other countries, and not merely the victims of the various acts of aggression, violently protested against this debasement of the collective system and still maintained that 'the Covenant as it is, or in a strengthened form, would in itself be sufficient to prevent war if the world realised that the nations undertaking to apply the Covenant actually would do so in fact' (Note to the League from the New Zealand Government, July 16, 1936).

The transitory nature of this development may also be illustrated by the work of the Reform Committee, established by the League Assembly of 1936. Its function was to prepare as soon as possible a report, with the purpose of strengthening 'the authority of the League of Nations by adapting the application of these principles to the lessons of experience'. At the time when the Assembly passed this resolution, the failure of the sanctions experiment directed against Italy was regarded as *the* experience in the light of which the Covenant should be remodelled. While the Committee was engaged in this work, the pace of the expansionist powers quickened, and the ensuing deterioration in the general situation lent to the Committee's work a grotesque unreality.

If the work of the Committee did not, and indeed in such circumstances could not, achieve practical results of major importance, it prepared the way for the formal separation of the Covenant from the Peace Treaties, a gesture which might have had some psychological effect in the era of the Weimar Republic, and which, coupled with other constructive efforts, might have served a useful purpose before 1936. In the atmosphere of September, 1938, however, it was inevitable that this 'reform' should appear as a symbol of League obsequiousness.

Dealing with various aspects of the Covenant, the *rapporteurs* produced memoranda which, at the most, were illuminating from the point of view of research. It may also be thought that the detailed discussions which took place in the Committee gave scope for an assessment of the strength of the various shades of opinion. The Committee's recommendation of the *de facto* revision of the Covenant from its original intention of maintaining the status quo was a serious matter. The suggestion of such an alteration

coercive and purely consultative body. Yet the resistance of those countries which either adhered to the orthodox interpretation of the Covenant, or emphasised the exceptional nature of the difficulties endured by the collective system, proved strong enough to impede for the time being the completion of the process of revision.

The Second World War did not materially affect this situation. Poland did not consider it worth while to bring the Nazi aggression to the attention of the League. The British Empire and France merely notified Geneva of the German attack on Poland. When Denmark, Norway, The Netherlands and Belgium shared the same fate, nothing was heard from the League of Nations. Thus, it would have been possible to assume that the League machinery had been quietly liquidated, had it not shown unmistakable signs of life when the Soviet Union attacked Finland. The League Assembly condemned the action of the Soviet Union and appealed to the members of the League 'to furnish Finland with all the material and humanitarian assistance which they can give and to abstain from all action that might weaken the power of resistance of Finland'. The League Council associated itself with the attitude taken by the League Assembly against the Soviet Union and, for the first time in the history of the League of Nations, made use of the weapon of expulsion. Norway and Sweden, however, refused the Anglo-French request to grant passage to their contemplated expeditionary force, and the Allies did not seriously dispute the right of these Scandinavian States to act in this manner. Until, therefore, the League of Nations was formally wound up, the political parts of the League system remained in the twilight of an uncompleted *de facto* revision.

In 1946, when the League of Nations was finally liquidated, the President of the last Assembly summed up the experiment of the League of Nations in words which are an appropriate epitaph for this hybrid between power politics and a true collective system :

' We are not assembled to discuss why our efforts were unavailing in years gone by. We know we were lacking in moral courage, that we often hesitated when action was needed, and that we sometimes acted where it would have been wiser to hesitate. We know that we were reluctant to shoulder responsibility for great decisions when greatness was needed.'

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A WORLD IN TRUST

'We have profited by our past mistakes. This time we shall know how to make full use of victory. This time the achievements of our fighting forces will not be thrown away by political cynicism and timidity and incompetence.'
President Roosevelt, September 3, 1942

THE end of the Second World War left the enemies of the United Nations in a state of complete prostration.

The Anglo-American bomber forces had wrought havoc in Germany's industrial centres and cities. The German air force had been driven from the skies. The German navy lay scuttled at the bottom of the sea or was hiding in its ports. The submarine wolf packs had found their masters. From West and East, the armies of the Allies had fought their way into the heart of Germany. The German armed forces had unconditionally surrendered, and the Hitlerite German State had fallen to pieces. In the words of the Allied Declaration of June 5, 1945 regarding the Defeat of Germany and Assumption of Supreme Authority by the Allied Powers, there was no longer any 'central government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country and compliance with the requirements of the victorious powers'. The Allied Powers assumed supreme authority over Germany.

In the Far East, the overwhelming might of the United Nations had manifested itself in the use of a weapon which heralded the dawn of a new era: the atomic age. Two of these bombs—the only two then in existence—sufficed to make the Japanese military caste and their big business confederates throw in their hand. The era of the Japanese 'co-prosperity' sphere was over. Subject to a reservation regarding the unimpaired position of the Emperor, the Japanese Government surrendered unconditionally to the United Nations. In the Instrument of Surrender of September 2, 1945, the Japanese undertook 'for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith, and to issue whatever orders and take whatever action may be required by the Supreme Commander for the Allied Powers or by any other designated representative of the Allied Powers for the purpose of giving effect to that Declaration'.

At that moment the whole world was at the feet of the victors. There was no power on earth that could have resisted their united will. The leaders of the United Nations were as free as any peace-makers are ever likely to be. They held the world in trust.

By 1945, the wide potentialities opened by the Second World War had been considerably narrowed down. The length of the war, its wide range and the intensity of the struggle had shrunk the wide radius of potentialities to one of measurable possibilities. The choice between these potentialities was made while the war was still in progress. Then the new world was being staged. These decisions determined the reality of the post-1945 world.

In order to do justice to the peace-makers of the United Nations, it is salutary to reflect on the hypothetical case of their defeat. The speeches of Hitler and the documents published by the United States Department of State on *Nazi-Soviet Relations 1939-1941* (1948) provide the necessary raw material for such an analysis.

'CUTTING THE GIANT CAKE'

In 1940 and 1941, Hitler and his Foreign Minister, described by the *Führer* as greater even than Bismarck, thought in terms of being 'offered a chance by Providence which probably occurred only once in a thousand years'. The pact between Germany, Italy and Japan, of September 27, 1940 outlined the 'new order' in Europe and Greater East Asia. Each of the objects of their premature concern was to be allocated 'its own proper place' in this system of 'lasting peace'.

The meaning of this cryptic phrase was illustrated in the conversations held during these years by Hitler and Ribbentrop with M. Molotov and the Japanese Foreign Minister. Germany was to take the lead in Europe and expand into Central Africa. Italy was to consolidate her position in the Balkans and in North and North-east Africa. Japan was given a free hand in East Asia south of the Island Empire of Japan. The Soviet Union was invited to direct her expansion south towards the Indian Ocean.

The execution of this scheme depended on the fulfilment of one condition: conquest of the British Isles. Then 'the British Empire would be apportioned as a gigantic world-wide estate in bankruptcy of 40 million square kilometers'. Unfortunately for Hitler, Soviet diplomatists remained sceptical. In vain, Hitler tried to convince M. Molotov of the fact that Great Britain was already defeated and only lacked the intelligence to admit the obvious. When Hitler happened to combine this assertion with the statement that Germany

was fighting a life-and-death struggle, M. Molotov inquired whether that meant that 'Germany was fighting "for life" and England "for death" '.

The Soviet Foreign Minister was too unimaginative to become enthusiastic over the wider aspects of Hitler's plan for the division of the world. He showed an uncomfortable interest in narrower issues nearer to the frontiers of the Soviet Union: the immediate withdrawal of German troops from Finland which, 'under the compact of 1939, belongs to the Soviet Union's sphere of influence'; Bulgaria which 'geographically is situated inside the security zone of the Black Sea boundaries of the Soviet Union'; the Straits, 'England's historic gateway for attack on the Soviet Union' and a zone bordering on the Straits which called for Soviet land and air bases in a German-dominated Europe; the area south of Batum and Baku in the general direction of the Persian Gulf which was to be recognised as the 'centre of the aspirations of the Soviet Union'; and, finally, Northern Sakhalin, where Japan was invited to renounce her concessions for coal and oil.

The 'insanity' of continued British resistance and growing United States help to the lonely fighting outpost of Western civilisation in Europe made Hitler look for an easier victim and for cheaper successes. By the German attack on the Soviet Union on June 22, 1941, and by the Japanese provocation of the United States at Pearl Harbour on December 7 of the same year, the totalitarian aggressors brought into operation against themselves the, until then, latent world balance of power. Hitler might still be thinking that his main task was to cut pieces from the 'giant cake' according to his own notorious appetite for sweet dishes. In fact, from then onwards, the task of shaping the future of international society lay with the United Nations.

THE ATLANTIC CHARTER

The principles for which the United Kingdom fought and which, even before her entry into the war as an active belligerent, the United States underwrote, were formulated off Newfoundland on August 14, 1941, in the now half-forgotten Atlantic Charter.

This unique document was not a treaty. It was not even signed by either Roosevelt or Mr. Churchill. It would not, in any case, have met the domestic requirements of a treaty under the Constitution of the United States. Even if it had been a treaty, nobody but the contracting parties could have derived any rights from it. *Pacta tertiis nec nocent nec prosunt* (treaties do not confer any benefits, nor impose any burdens, on third parties). The Atlantic Charter

was nothing more nor less than was stated in its Preamble : a means of making known to the world 'certain common principles in the national policies' of the United States and of Great Britain in which both Roosevelt and Mr. Churchill based their hopes for a better future for the world.

The significance of the Atlantic Charter lay in the fact that it provided a common denominator for uniting the national policies of the growing host of the United Nations. At the Inter-Allied Meeting at St. James's Palace on September 24, 1941, the Soviet Union and the Allied governments-in-exile declared their adherence to the principles of the Atlantic Charter and expressed their 'intention to co-operate to the best of their ability in giving effect to them'.

The Atlantic Charter was reaffirmed in the Preamble of the Joint Declaration of the United Nations of January 1, 1942. The signatories further declared that complete victory over their enemies was 'essential to decent life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands'. The Declaration was open to any other nation willing to render material assistance in the struggle for victory over Hitlerism.

By March 1, 1945—the date line set at the Crimea Conference for declaration of war against Germany by Associated Nations who desired to qualify for invitation to the Conference of San Francisco—signatories and adherents to the Declaration numbered forty-four States. The American Continent was represented by twenty-one, Europe by fifteen, Asia by five and Africa by three independent nations.

In drafting the Charter, both Roosevelt and Mr. Churchill were conscious of another document of this kind: Wilson's Fourteen Points.¹ Roosevelt did not want to be prematurely committed to a revival of the League of Nations. Mr. Churchill, too, desired to avoid one of the characteristic features of Wilson's Fourteen Points: application of broad principles to 'each and every case which will have to be dealt with when the war comes to an end'. In his report on the Atlantic Meeting to the House of Commons on September 9, 1941, Mr. Churchill explained that it would have been unwise 'for us at this moment to be drawn into laborious discussions on how to fit all the manifold problems with which we shall be faced after the war'.

- Some of the difficulties which had arisen from the Fourteen Points were due to their too broad formulation. It had, however, been still more embarrassing that the Fourteen Points were the agreed basis

¹ See above, p. 279 et seq.

of the Peace Settlements of 1919. This time, there was no question of the principles of the Atlantic Charter being more than mere standards which the United Nations had set for themselves, compliance with which none of the vanquished nations could claim as a matter of right. If, at that early stage of the war, any one was still unaware of this essential difference, the frequent public announcements of peace terms made since the Conference of Casablanca of 1943 by the United Nations should have destroyed this illusion. There was to be only one agreed basis on which the aggressors might lay down their arms: unconditional surrender.

The Casablanca formula (January 26, 1943) served three purposes. In President Roosevelt's view, it appealed to some sections of American public opinion, reawakening, as it would, associations with the American Civil War. Moreover, it was a dramatic reassurance of Marshal Stalin by President Roosevelt and Mr. Churchill—who, after consultation with the British War Cabinet, associated himself with this phrase—that the Soviet Union need not fear any separate peace between the Western democracies and Germany. Finally, the 'unconditional surrender' formula was designed to remove the 'danger of anything like Mr. Wilson's Fourteen Points being brought up by the Germans after their defeat, claiming that they surrendered in consideration of them' (Mr. Churchill in the House of Commons, May 24, 1944).

In spite of these formal differences, the Atlantic Charter was the child of the same spirit that had brought forth the Fourteen Points. Point One of the Atlantic Charter laid down that the parties to the Charter sought no aggrandisement, territorial or otherwise. This principle was fully in accord with the Wilsonian tradition. It had been Wilson's insistence which had prevented outright colonial annexations by the victors of the First World War and substituted instead the mandate principle.² Point One even went beyond the obligations undertaken by the members of the League of Nations under the Covenant and by the signatories to the Kellogg Pact.³ Neither of these treaties had guaranteed the territorial integrity of the aggressor States. Thus Point One imposed a stringent self-denying ordinance on the parties to the Atlantic Charter.

Point Two expressed the desire to see no territorial changes that did not accord with the freely expressed wishes of the peoples concerned. This principle was cautiously formulated in the negative, and combined an implied acknowledgment of the need for peaceful change with the principle of national self-determination. It further

² See below, p. 652 *et seq.*

³ See below, p. 604 *et seq.*

laid down the criterion by reference to which future territorial adjustments were to be made. The emphasis in the last of Wilson's Fourteen Points was on the guarantee of the status quo. The experience of the inter-war period had taught the draftsmen of the Charter the inseparable connection in any well-balanced system of collective security between the maintenance of territorial integrity and peaceful revision.

Point Three applied the principle of self-determination to the regulation of the internal affairs 'of all peoples' and expressed the wish for the restoration of sovereign rights and self-government to those who were forcibly deprived of them. It left open the interpretation of the word 'peoples'. In his report to the House of Commons, Mr. Churchill took pains to emphasise that the Charter did not mean to interfere with the 'progressive evolution of self-governing institutions in the regions and peoples which owe allegiance to the British Crown'. Especially in so far as India was concerned, President Roosevelt and Mr. Churchill had to agree to disagree on this point in days to come.

Still more surprisingly, the Charter did not explain whether self-government necessarily implied democracy, and what kind of democracy. At the end of the First World War, it had been commonly accepted that self-government meant democratic government, and that democracy could only mean democracy in the Western sense of the word. When the Charter was written, the same assumption held good in the minds of the two Anglo-Saxon statesmen. When, however, the Soviet Union and China became parties to the Atlantic Charter, they were not committed to such unstated premises. They, as well as other signatories of the Declaration of the United Nations, remained free to interpret Point Three in a more literal sense.⁴

Point Four established the principle of equal access for all nations, 'great or small, victor or vanquished', to the trade and raw materials of the world which were needed for their economic prosperity. In order to avoid the delay which would have been involved in prior consultation with the Dominion governments, Roosevelt consented to a reservation regarding existing obligations. As finally formulated, this exception did not only apply to the Ottawa Agreements, but also to all other treaties by which parties to the Atlantic Charter had granted preferential treatment to each other or to other States. This principle was more strongly and widely formulated than in the corresponding Point Three of Wilson's Fourteen Points.⁵ The

⁴ See below, p. 324 *et seq*

⁵ See below, p. 568.

inter-war period had made it apparent that there were indispensable economic, as well as political, conditions of a stable peace.

On the suggestion of the British War Cabinet, with which Mr. Churchill had kept in touch by cable, Point Five was added to the draft. It defined the attainment in all countries of improved labour standards, economic advancement and social security as the object of international economic co-operation. This constituted a marked departure from economic *laissez-faire* which had been taken for granted by the Allied and Associated Powers in the First World War.

Point Six gave expression to the hope of a peace which would secure freedom from fear and want. Mr. Churchill attempted to persuade President Roosevelt to include a reference to the means by which such a peace was to be established and maintained. The President, however, objected to the insertion of words such as 'by effective international organisation'. While Mr. Churchill had long come to identify British interests with those of a collective peace system, President Roosevelt had still to tread warily in face of isolationist opposition at home. During the Atlantic Meeting, the House of Representatives extended the operation of the Selective Service Act by a majority of only one vote. The substance of Mr. Churchill's argument, however, was incorporated into Point Eight.'

The Atlantic Charter provided for the unilateral disarmament of the aggressor States 'pending the establishment of a wider and permanent system of general security'. It did not escape those concerned that such a system would require an effective international organisation. The parties to the Charter were also to aid and encourage 'all other practical measures' which would lighten for 'peace-loving nations' the crushing burden of armaments. Finally, in Point Seven of the Charter, Point Two of Wilson's Fourteen Points was revived: freedom of the seas within the framework of a general peace.

What were the reasons for the formulation of so ambitious a programme at such an early stage of the war?

Until the Atlantic Meeting, Mr. Churchill had been consistently opposed to the public announcement of British war or peace aims. In his speech of September 9, 1941, he confessed that he had not changed his previous views on this subject: 'I have, as the House knows, hitherto consistently deprecated the formulation of peace aims or war aims, however you put it, by His Majesty's Government at this stage. I deprecate it at this time when the end of the war is not in sight, when the conflict sways to and fro with alternating

fortunes and when conditions and associations at the end of the war are unforeseeable.'

In support of this apparently negative attitude it could be said that, at that stage, Great Britain's overriding war aim was plain for the world to see. It was a fight for sheer survival. The maximum of concentration on this vital task was the need of the hour. Discussions on rather remote peace aims were only likely to jeopardize national unity. Mere silence, however, was cold comfort to the masses who bore the brunt of the struggle. In his broadcast on the Atlantic Charter on August 24, 1941, Mr. Churchill himself admitted that 'above all it is necessary to give hope and the assurance of final victory to those many scores of millions of men and women who are battling for life and freedom or who are already bent down under the Nazi yoke'.

If this argument held good for war aims defined in concord with the United States, it also held good for the formulation of purely British War aims. Why should Mr. Churchill then have taken the initiative in submitting the draft Charter to the President? The Atlantic Charter provided food for a hungry propaganda machine. To assume, however, that this was all would be to underestimate the astuteness of both these Anglo-Saxon statesmen. It served an additional, still more important practical purpose.

Of necessity, it was the primary object of British diplomacy to hasten the entry of the United States into the war. Since 1940, the 'former Naval Person'—as he signed himself in his correspondence with Roosevelt—had concentrated his every effort on increasing the intimacy of relations between Great Britain and the United States.

Nor had President Roosevelt any illusions on the inevitability of the ultimate entry of the United States into the war. For a long time, the President had done everything in his power to make Americans understand the positive values for which the Western world stands. The principles of a moral international order, for which Wilson had striven, were condensed by President Roosevelt into four fundamental freedoms; freedom of speech and expression, freedom of worship, freedom from want and freedom from fear—'everywhere in the world'. In his Annual Message to Congress on January 6, 1941, Roosevelt had described these principles as 'the very antithesis of the so-called new order of tyranny which the dictators seek to create'. Mr. Eden responded to this Message by calling it 'the 'key-note of our own purposes''. The Atlantic Charter was the projection of the Four Freedoms on an international scale. In his Independence Day Broadcast in 1941, Roosevelt had publicly

expressed his conviction that the United States could 'never survive as a happy and prosperous oasis in the middle of a desert of dictatorship'. Within the widening limits drawn for him by American public opinion, Roosevelt, in fact, did everything he could to assist the British war effort.

The Atlantic Charter assisted each of them in the task of approximating the national policies of the two countries still further. Mr. Churchill could point to the unique character of a joint declaration made by a wartime Prime Minister and by the head of the most powerful neutral State. In Mr. Churchill's own words, the Atlantic Charter set up a milestone. Though he did not add on which road, the House of Commons understood.

For President Roosevelt, the Charter served an additional purpose. In wide circles of American public opinion, United States diplomacy was always suspected of being taken in by the wily British for hidden purposes beyond the grasp of the Department of State. There was to be no repetition of the secret treaties concluded by Great Britain and other European powers during the First World War. The Administration was open to attack on the ground that it was merely being used as a tool to buttress the crumbling British Empire. Now matters were different. The Atlantic Charter laid down the principles for which Great Britain was fighting. Furthermore, it embodied standards which, without modification, the other Allies of Great Britain could be made to accept—especially the Soviet Union.

Wilson may have been the ghost of the Atlantic Meeting. Another invisible companion of Roosevelt and Mr. Churchill was a more enigmatic figure: Stalin. However doubtful Roosevelt and Mr. Churchill—and still more so their military advisers—might then have felt of the staying power of the Soviet Union, Mr. Churchill had made Great Britain Russia's ally on the very day of the Nazi invasion of the Soviet Union. In his broadcast of June 22, 1941, Mr. Churchill had spoken of 'but one aim, and one single irrevocable purpose. We are resolved to destroy Hitler and every vestige of the Nazi regime, from this nothing will turn us—nothing'. The Agreement for Joint Action of July 12, 1941 between the Soviet Union and the United Kingdom contained only two specific obligations: mutual assistance and a promise not to negotiate or to conclude any separate armistice or treaty of peace. Like Great Britain, the Soviet Union could claim—as Marshal Stalin did in his broadcast speech of July 3, 1941—that the issue of the war was whether the peoples of the Soviet Union should be 'free or fall into slavery'. Nobody outside the Kremlin, however, could be sure

what, in the hour of victory, would be the ultimate objectives of the Soviet war of liberation.

The Atlantic Charter provided a useful means of gently tying the Soviet Bear to standards higher than those to which bad company had accustomed it during its association with the Nazi vulture. Once the Soviet Union had accepted the principles of the Atlantic Charter—as, together with Britain's other Allies she did on September 24, 1941—future Soviet claims could be subjected to polite scrutiny according to their compatibility with the standards of the Charter. Yet, neither the Resolution adopted at the Inter-Allied Meeting of September 24 nor the Declaration of the United Nations of January 1, 1942 constituted in this respect legally binding commitments.

Nevertheless, Points Two and Three of the Atlantic Charter were valuable diplomatic weapons in opposing extravagant Soviet claims for territorial changes and attempts at imposing from outside Communist regimes in other countries. These arguments would be doubly strong if they applied in favour of other parties to the Atlantic Charter or, subsequently, to signatories of the Declaration of the United Nations. They could be further supported by reference to official Soviet statements by which the intentions of Soviet foreign policy were still further amplified. Thus, at the Inter-Allied Meeting of September 24, 1941, M. Maisky, the Soviet Ambassador in Great Britain, affirmed that 'the Soviet Union has applied, and will apply, in its foreign policy the high principle of respect for the sovereign rights of peoples. The Soviet Union was, and is, guided in its foreign policy by the principle of self-determination of nations'.

These moves on the level of principle were supplemented by patient efforts at the clarification of concrete issues. Until the entry of the United States into the war, the main burden in this respect fell on British diplomacy. For the moment, it tackled successfully the three thorniest problems of immediate concern: the Polish-Soviet Frontier, the territorial integrity of Turkey and the question of Persia.

Poland. Under British auspices, the Soviet Union signed a Treaty on July 30, 1941 with the Polish Government-in-exile. The ceremony of signature was presided over by Mr. Churchill, and Mr. Eden, too, was present. According to Article 1, the government of the Soviet Union recognised that 'the Soviet-German treaties of 1939 relative to territorial changes in Poland have lost their validity'. On the same day, an exchange of notes took place between the British and Polish Governments. Mr. Eden assured Sikorski that 'His Majesty's Government do not recognise any territorial changes which

have been effected in Poland since August, 1939'. The Soviet Union refused, however, to go beyond the annulment of the Ribbentrop-Molotov Agreements and to recognise expressly Poland's frontiers of 1921.

Turkey. Declarations in identical terms were delivered on August 10, 1941, by the British and Soviet Ambassadors to the Turkish Foreign Office. Both belligerents confirmed their fidelity to the Montreux Convention on the Straits of 1936 and promised 'scrupulously to observe the territorial integrity of the Turkish Republic'.

Persia. In view of the dangerous position which had been created by large scale German infiltration into Persia and the risk of a German-inspired *coup d'état*, the Soviets increasingly urged speedy action. The British Government agreed, but insisted on the joint occupation of Persia. On August 25, 1941, the two Governments delivered notes to the Government of Persia in which they explained the need for their intervention and affirmed their 'respect of the territorial integrity and State independence of Iran'. Following the entry of British and Soviet troops into Persia, Mr. Eden disclaimed, in a speech at Coventry on August 30, any intention on the part of either Great Britain or of the Soviet Union 'to seize any part of Iran'. In subsequent agreements, it was possible to refer more explicitly to the standards accepted by the parties under the Atlantic Charter.)

The Preamble to the Treaty of Alliance between the United Kingdom, the Soviet Union and Persia of January 29, 1942, contained the following unequivocal statement: 'Having in view the principles of the Atlantic Charter jointly agreed upon and announced to the world by the President of the United States of America and the Prime Minister of the United Kingdom on the 14th August, 1941, and endorsed by the Government of the Soviet Union on the 24th September, 1941, with which His Imperial Majesty The Shahinshah declares his complete agreement and from which he wishes to benefit on an equal basis with other nations of the world', Great Britain and the Soviet Union jointly and severally undertook to 'respect the territorial integrity, sovereignty and political independence of Iran'. The Treaty provided expressly for the withdrawal of the Allied forces from Persian territory within six months after the conclusion of an armistice or peace with Germany and her associates.⁹

There were solid inducements which made possible the co-ordination of Soviet policy with those of Great Britain and of the United States. Within a few weeks after the German invasion of the Soviet

⁹ See below, p. 414 et seq.

Union, the Soviet Purchasing Agency in the United States obtained licences to ship supplies on a large scale to Russia. On August 2, 1941, the United States informed the Soviet Union that she had become eligible for lend-lease aid, 'the strengthening of the armed resistance of the Soviet Union to the predatory attacks of the aggressor who threatens the security and the independence, not only of the Soviet Union, but also of all other nations, (being) in the interest of the national defence of the United States'.

From the Atlantic Meeting, President Roosevelt and Mr. Churchill sent a joint message to Marshal Stalin pledging further help, but pointing out at the same time the need for comprehensive discussions on a high level :

'We must now turn our minds to the consideration of a more long term policy, since there is still a long and hard path to be traversed before there can be won that complete victory without which our efforts and sacrifices would be wasted . . . The needs and demands of your and our armed services can only be determined in the light of the full knowledge of the many factors which must be taken into consideration in the decisions that we make.'

(The Moscow Conference of September, 1941, was the result. Two issues that affected the Atlantic Charter were raised.

In connection with Point Eight, Stalin inquired about reparations from Germany, but Lord Beaverbrook evaded the issue.

There was another question which loomed large in the mind of Mr. Harriman, the leader of the United States Delegation : freedom of religion. Roman Catholic opposition in the United States to help to the Soviet Union was still active. Owing to an oversight, the Atlantic Charter had not contained any direct reference to freedom of religion. In his Message to Congress, Roosevelt tried to cover up the omission by pointing out that 'the declaration of principles includes of necessity the world need for freedom of religion and freedom of information. No society of the world organised under the announced principles could survive without these freedoms which are a part of the whole freedom for which we strive'.

Mr. Harriman was instructed to extract a suitable statement from the Soviet leaders and to use his influence in order to secure at least ✓ their nominal compliance with this principle. The Soviet Government promised to be helpful. On October 4, an official statement was ✓ issued in which the existing position of the churches within the Soviet Union was explained : complete separation of Church and State and freedom of religion, subject to a reservation regarding the use of religion for counter-revolutionary purposes. In signing the Declaration of the United Nations of January 1, 1942, the Soviet Union accepted still more formally the principle of religious freedom.)

On November 6, 1941, the United States granted to the Soviet Union an interest-free loan of one milliard dollars to finance lend-lease supplies. By a happy coincidence, Marshal Stalin declared in a speech delivered on the same day before the Moscow Soviet his unqualified acceptance of the principles embodied in Points Two and Three of the Atlantic Charter :

‘We have not nor can we have such war aims as the seizure of foreign territories or the conquest of other peoples, irrespective of whether European peoples and territories or Asiatic peoples and territories, including Iran, are concerned. . . . We have not nor can we have such war aims as the imposition of our will and our regime on the Slavic and other enslaved peoples of Europe who are waiting for our help. Our aim is to help these peoples in their struggle for liberation from Hitler’s tyranny, and then to accord them the possibility of arranging their lives in their own land as they think fit, with absolute freedom. No interference of any kind with the domestic affairs of other nations !’

The formal link between the Atlantic Charter and United States Lend-Lease help to the Soviet Union was created in the Master Lend-Lease Agreement of June 11, 1942 between the two countries. All the master agreements contained in their Article 7 an express reference to the economic objectives of the Atlantic Charter. The Preamble of the Treaty with the Soviet Union, however, contained a significant additional paragraph of its own : ‘Whereas the Governments of the United States of America and the Soviet Union, as signatories of the Declaration by United Nations of January 1, 1942, have subscribed to a common programme of purposes and principles embodied in the Joint Declaration, known as the Atlantic Charter . . . the basic principles of which were adhered to by the Government of the Soviet Union on September 24, 1941.’

The Atlantic Charter and the Declaration of the United Nations kept their central place in subsequent public declarations and treaties of the United Nations. They figured no less prominently in Allied propaganda to neutrals and enemies alike. Although not couched in the form of legal obligations towards third parties, the world believed that the United Nations intended to use their ever increasing power as trustees of the world at large. As late in the war as in February, 1945, the Big Three re-affirmed at Yalta in their Declaration on Liberated Europe their ‘faith in the principles of the Atlantic Charter’, their ‘pledge in the Declaration by the United Nations’ and their ‘determination to build, in co-operation with other peace-loving nations, world order under law, dedicated to peace, security, freedom and general well-being of all mankind’.

SUPPLEMENTING THE CHARTER

On the level of general standards, the Atlantic Charter was supplemented by the United Nations in four particular fields; retribution for war crimes, restitution of looted property, economic co-operation, and post-war international order.

Retribution for War Crimes. The crimes committed by the totalitarian aggressors against prisoners of war and the civilian population in occupied territories were only paralleled by the treatment meted out by those governments to their political opponents at home and to those sections of their populations whom they had condemned to systematic mass extermination.

Traditional international law had only concerned itself with crimes committed by members of armed forces in time of war. These rules had grown on the assumption that they only applied in isolated cases and to depraved individuals from whom their governments would be only too anxious to dissociate themselves.

This charitable presumption did not apply in the case of the totalitarian aggressors. They had taken the warpath to destroy world civilisation and to put in its place their own systems of, mechanised barbarism. International law—because it was part and parcel of that civilisation⁷—was a favourite target of scornful denigration. In his conversations with Dr. Rauschning, the German *Führer* gave free vent to his disdain for international law: 'I shall shrink from nothing. No so-called international law, no agreements will prevent me from making use of any advantage that offers'. Or, 'my behaviour in wartime will be no different. The most horrible warfare is the kindest. I shall spread terror by the surprise employment of all my measures. The important thing is the sudden shock of an overwhelming fear of death.'

The armed forces of Germany and of her allies lived up to the *Führer's* expectations. They behaved in a manner which would have entitled the United Nations to treat the governments and armed forces of their enemies as international outlaws. The United Nations, however, preferred a milder course.

As horrors of the atrocities mounted all over Europe and in the Far East, the warnings of the United Nations became increasingly sterner.

On October 25, 1941, Roosevelt drew the attention of the world to the mass execution of hostages by the Nazis—acts of frightfulness of 'desperate men who know in their hearts that they cannot win'. Mr. Churchill immediately associated his Government with this state-

⁷ See above, p. 29 *et seq.*

ment and warned the perpetrators of such crimes that 'these cold-blooded executions of innocent people will only recoil upon the savages who order and execute them. . . . Retribution for these crimes must henceforward take its place among the major purposes of the war.' In an Allied Declaration of January 13, 1942, the governments-in-exile placed among their principal war aims the 'punishment, through the channel of organised justice, of those guilty and responsible' for war crimes of any kind.

By a Declaration of October 14, 1942, the Soviet Government expressed its concurrence with the Allied Declaration and its resolve that 'the criminal Hitlerite Government and all its accomplices must and shall pay a deserved and severe penalty for the crimes committed by it against the peoples of the Soviet Union and against all freedom-loving peoples in the territories temporarily occupied by the German army and its associates'. In a separate Declaration of December 17, 1942, the United Nations expressed their horror of the bestial policy of calculated mass extermination of the Jewish population in all countries under German control. They reaffirmed their 'solemn resolution to ensure that those responsible for these crimes shall not escape retribution'.

By the end of 1943, war crimes had increased in cruelty and number, but so had the risk of speedy retribution. By the Moscow Declaration of November 1, 1943, the Big Three warned their enemies that suspected war criminals would be sent back for trial to the countries where they had committed their crimes. Others were solemnly warned: 'Let those who have hitherto not imbrued their hands with innocent blood beware lest they join the ranks of the guilty; for most assuredly the three allied Powers will pursue them to the uttermost ends of the earth and will deliver them to their accusers in order that justice may be done'. The major war criminals whose offences had no particular geographical localisation were to be punished by the joint decision of the governments of the United Nations.

Restitution. The restitution of property stolen by the aggressors in occupied countries was fully in accordance with the Hague Convention on Land Warfare of 1907 and the logical complement of the policy adopted by the United Nations regarding the punishment of war crimes. In their Declaration of January 5, 1943, the United Nations declared their resolve to do their utmost to defeat the methods of dispossession practised by the enemy States. The warning applied both to open plunder and to the host of transactions cloaked in apparently legal form. Special Declarations were issued by the Big Three on February 22, 1944 regarding the refusal of their

Treasuries to participate indirectly in any way in, or to recognise, any disposal of looted gold, currencies, securities and other assets by the Axis powers on the world markets.

Economic Co-operation. Right from the time the United States first entered into the war, President Roosevelt took the initiative in tying all recipients of lend-lease help to a constructive economic post-war policy.

In Article 7 of the various Lend-Lease Agreements basic principles were embodied which were to give a more concrete character to the economic clauses of the Atlantic Charter. Roosevelt did not ask any of the United Nations to do more than to follow the lead of the United States. In doing so, he recognised that community relations of any type can be established in only one way, by setting an example. No return made for aid furnished by the United States was to burden commerce between such nations and the United States.

The Agreements were to 'promote mutually advantageous economic relations between them and the betterment of world-wide economic relations'. They were to provide on a non-exclusive basis for appropriate measures towards the expansion of production, employment, and the exchange and consumption of goods; the elimination of all forms of discrimination in international commerce; the reduction of customs tariffs and other trade barriers and, in general, the attainment of all the economic objectives of the Atlantic Charter.

The Conference of the International Labour Organisation, in a Resolution of November 5, 1941, endorsed the principles of the Atlantic Charter connected with its own activities and elaborated these economic and social standards in a charter of its own, the Philadelphia Charter of May 10, 1944. This Charter elaborated the conditions of a peace based on social justice.

First, labour was not to be treated as a commodity. Secondly, freedom of expression and of association were considered to be essential to sustained progress. Thirdly, poverty anywhere was to be regarded as a danger to prosperity everywhere. Fourthly, an effective prosecution of the war against want was thought to require continuous and concerted national and international action in close co-operation on a footing of equality between governments, workers and employers. Finally, the central aim of national and international policy was defined as the attainment of conditions in which all human beings, irrespective of race, creed or sex, could pursue 'their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity'.^s

^s See below, p. 585 *et seq.*

Democracy. The political systems compatible with self-government were left undefined in the Atlantic Charter. On Soviet insistence, democracy became one of the Allied war aims. In Marshal Stalin's broadcast of July 3, 1941 the Soviet war of liberation was predicted to 'merge with the struggle of the peoples of Europe and America for their independence, for democratic liberties'. The joint Polish-Soviet Declaration of December 4, 1941, too, envisaged a 'new organisation of international relations on the basis of unification of the democratic countries in a durable alliance'.

The first inter-Allied statement which expressly referred to democracy was the Moscow Declaration on Italy by the Foreign Ministers of the Big Three (November 1, 1943). Allied policy towards Italy was to be 'based upon the fundamental principle that Fascism and all its evil influences and emanations shall be utterly destroyed and that the Italian people shall be given every opportunity to establish governmental and other institutions based upon democratic principles'. In the spirit of the Atlantic Charter, a reservation was made in favour of the 'right of the Italian people ultimately to choose their own form of government'.

At the Teheran Conference (December 1, 1943), the three 'friends in fact, in spirit and in purpose'—for readers with short memories, President Roosevelt, Mr. Churchill and Marshal Stalin in the order of their signatures—announced to the world that, for purposes of post-war reconstruction, they would 'seek the co-operation and active participation of all nations, large and small, whose peoples in heart and mind are dedicated, as are our own peoples, to the elimination of tyranny and slavery, oppression and intolerance'. They spoke of a 'world family of Democratic Nations', in which 'all peoples of the world may live free lives, untouched by tyranny, and according to their varying desires and their own consciences'.

In the Yalta Declaration on Liberated Europe (February 11, 1945) they reaffirmed that the 'establishment of order in Europe and the rebuilding of national economic life must be achieved by processes which will enable the liberated peoples to destroy the last vestiges of nazism and fascism and to create democratic institutions of their own choice'. The three Governments promised to assist where necessary the liberated peoples to 'form interim governmental authorities broadly representative of all democratic elements in the population and pledged to the earliest establishment through free elections of governments responsible to the will of the people, and to facilitate where necessary the holding of such elections'.

The question which remained open was what the Big Three understood by democracy. If any of the peace-makers of 1919 had

been asked to define it, he would have enumerated with little hesitation six essentials of democratic government. At agreed intervals, the people must be consulted on the government of their choice. The government must be based on the confidence of the majority of the elected representatives of the people. The will of the majority prevails. The judiciary must be independent from the executive in the exercise of its functions. Freedom of criticism, and especially freedom of speech and of the press, must be effectively guaranteed. Perhaps he might have added a last prerequisite. Majority and minority must have some overriding values in common or, at least, share the conviction that democracy is the least objectionable form of government.

During the Second World War, this conception of democracy still recommended itself to the representatives of the Western democracies. In his speech in the House of Commons on December 8, 1944, Mr. Churchill held it to be the foundation of democracy that the 'ordinary man . . . puts his cross on the ballot paper showing the candidate he wishes to be elected to Parliament'. Further, the 'humble common man' should be able to 'do this without fear, and without any form of intimidation or victimisation. He marks his ballot paper in strict secrecy, and then elected representatives meet and together decide what government, or even, in times of stress, what form of government they wish to have in their country. If that is democracy I salute it. I espouse it.' Yet for any Leninist this was only 'bourgeois democracy' or, in Marshal Stalin's own words, 'democracy for the strong, democracy for the propertied classes'.

To a Communist, Western Democracy is merely a formal democracy. Its central value is liberty, while to a Marxist democracy is of little meaning unless it makes possible economic equality of opportunity and constant participation of the masses in the day-to-day administration of public affairs. This is the Soviet theory of 'democracy', which, we have been told, is a 'type of democracy no less genuine than, though different from, the Western parliamentary type' (W. Friedmann, *The Crisis of the National State*, 1943).

Actually, this type of democracy is in fact merely a form of totalitarianism in disguise.⁹ In this respect, nothing save the trappings, and the fact that the Soviet Union had become the ally of the Western democracies, had changed. As a matter of wartime tactics it was opportune to gloss over this disagreeable discrepancy. Thus, it was left to the dynamic of events to decide whether democracy or totalitarianism was to be the fate of the liberated and conquered enemy countries.

⁹ See above, p. 79 *et seq.*

The Post-War International Order. In a letter of November 8, 1941 (W. S. Churchill, *The Second World War*, Vol. 3: *The Grand Alliance*, 1950), Marshal Stalin expressed agreement with Mr. Churchill on the need for clarifying the relations between the Soviet Union and the United Kingdom. In his opinion, one of the two reasons for the lack of co-ordination was the complete absence at that time of any 'definite understanding between our two countries on war aims and on plans for the post-war organisation of peace'.

Mr. Churchill's reply on November 21 was somewhat dilatory. He indicated that these matters would have to await settlement 'at the council table of the victors', and that the first peace objective would have to be to 'prevent Germany, and particularly Prussia, breaking out upon us for the third time'. Mr. Churchill left it to Mr. Eden to 'discuss the whole of this field' with Marshal Stalin. By the time the Anglo-Soviet Treaty of Alliance (May 26, 1942) was signed, this process of clarification had scarcely progressed at all. The only commitment which the two Contracting Parties were prepared to undertake was their common pledge to work together 'in close and friendly collaboration after the re-establishment of peace for the organisation of security and economic prosperity in Europe'.

By 1943, public opinion in the United States had sufficiently developed to allow Roosevelt to be more outspoken than had been possible in 1941 on the subject of the post-war international order. In the Moscow Declaration of October 30, 1943, the Governments of the Big Three and of China recognised the necessity of establishing and maintaining international peace and security 'with the least diversion of the world's human and economic resources for armaments'.

They undertook to establish at the earliest practicable date 'a general international organisation, based on the principle of the sovereign equality of all peace-loving States, and open to membership by all such States, large and small, for the maintenance of international peace and security'. Finally, they declared their resolve to co-operate with each other and the other members of the United Nations to bring about a 'practicable general agreement with respect to the regulation of armaments in the post-war period'. A Senate Resolution on War and Peace Aims of the United States of November 5, 1943 endorsed President Roosevelt's policy on post-war international organisation.

At the Teheran Conference (December 1, 1943), President • Roosevelt, Mr. Churchill and Generalissimo Stalin acknowledged the 'supreme responsibility resting upon us and all the United Nations to make a peace which will command the goodwill of the over-

whelming mass of the peoples of the world and banish the scourge and terror of war for many generations'. They promised to 'seek the co-operation and active participation of all nations, large and small, whose peoples in heart and mind are dedicated, as are our own peoples, to the elimination of tyranny and slavery, oppression and intolerance'. All these nations were welcomed into 'a family of Democratic Nations'. The three warleaders looked 'with confidence to the day when all peoples of the world may live free lives, untouched by tyranny, and according to their varying desires and their own consciences'.

THE ATLANTIC CITY

The vision of the Atlantic Charter was an international community freed from the rule of force. The principles of the Charter were based on the boldest assumptions and begged the constructive solution of fundamental and intricate issues.

Four premises were taken for granted.

It was held that international conflicts would in future be solved only by peaceful means in a single world-wide international community. In so far as the objective unity of the world was concerned, this assumption was realistic. Whether a world community in the subjective sense would come into existence, largely depended on the validity of a further assumption.

It was thought that the wartime unity of the United Nations—potential in August, 1941 and real in January, 1942—was more than a negative unity against actual common enemies. In the Atlantic Charter such unity was assumed at its highest, that is to say, as a positive and permanent unity for the achievement of common purposes. Yet, as it was put by Mr. Eden in his Speech in the House of Commons of December 14, 1943, 'more than once before allies have stood together in war and fallen apart in peace'. In *Speaking Frankly* (1947) Mr. Byrnes recorded that, at Yalta, Marshal Stalin, too, had reflected on this crucial question: 'It is not so difficult to keep unity in time of war since there is a joint aim to defeat the common enemy, which is clear to everyone. The difficult task will come after the war when diverse interests tend to divide the Allies. It is our duty to see that our relations in peacetime are as strong as they have been in war.'

Aggression and war-mongering were treated as specific characteristics of the enemies of the United Nations. The fact that, for the second time within one generation, Germany had unleashed two world wars, appeared to make this hypothesis self-evident. As long

as the Big Three, Four or Five remained the guardians of world peace against the defeated enemies, the rest of the world could safely be left to the task of establishing and developing its relations on a community basis. The new world organisation was not to be burdened with the task of peace-making. The United Nations at war were to bear the exclusive responsibility in all matters relating to the surrender and disarmament of their common enemies. They were to remain free to 'take all measures deemed by them to be necessary against any violation of the terms imposed upon the enemy' (Declaration on General Security of the Moscow Conference, October 30, 1943).

Finally, it was optimistically assumed that somewhere there would exist the centre of will and power which would be adequate to make possible the achievement of the ends envisaged in the Atlantic Charter. It was left open whether this would be the united power of the chief Allies, the common sense and community spirit of all the United Nations or a new world organisation.

Even if each of these premises had been a reality, formidable problems had to be solved.

The renunciation of aggrandisement in any form was one thing. The war demanded, however, from each of the United Nations an increasing toll in human life and material sacrifices. The United States and Great Britain did their best to ease the burdens of their Allies by mutual lend-lease help, and these reciprocated as best they could. This assistance made it possible for the countries nearest to Germany to continue their fight, but it was not sufficient to compensate them for the destruction and spoliation of their homelands. As early as 1941, Stalin had raised the question of reparations. Yet, considering the experience with reparations after the First World War, was it not necessary to apply more drastic measures next time? Was the proposition that the cession of territories, too, might constitute a suitable form of reparation to be rejected out of hand?

Then there was the slumbering conflict of ideologies. For purposes of the war it was sufficient to say with Mr. Churchill that 'any man or State who fights against Nazism will have our aid. Any man or State who marches with Hitler is our foe'. It was even possible to read the maximum into the self-dissolution of the Comintern and to believe faithfully in the miracle of the transformation of the Soviet police State into a 'genuine' democracy.

Yet did this mean that the Soviets had thrown overboard their tenets of the inevitability—or at least, the probability—of ultimate conflict between the capitalist and socialist worlds? Were the two to live peacefully side by side, with their ideologies kept in

watertight compartments? Even if the Soviets were prepared to adopt such a static view, have not ideas a life of their own? Would both sides be willing to let each nation make its own choice free from outside interference?

The issue would become still more acute if the hypothesis of 'Soviet democracy should prove to be false. Was the West then to stand passively by while all the values for which it had fought the Triangle Powers were contemptuously flouted by the Soviet Union? Were the men in the Kremlin to be idle spectators while, after victory, the Western powers continued their practices of 'capitalist exploitation' and of 'colonial oppression'? Or was there to be a constructive solution of the antinomy between political and economic democracy? Was the age of the common man to mean that the West would embrace the principle of economic and social equality of opportunity in more than the formal sense in which monopoly capitalism may call itself free enterprise, and that the East would accept the principles of individual freedom, toleration and the rule of law?

In the economic field, ideological differences had hardened during the inter-war period into diametrically opposed forms of organisation. On the assumption of a community peace, one dilemma of previous national economic policy could be discarded. It was no longer necessary to consider peacetime economies as potential war economies.

Yet how were the principles of equality of economic opportunity and of free access to the raw materials of the world to be reconciled with the existence of the great capitalist monopolies and of the no less exclusive systems of planned socialist economies? Who was to provide the capital to make freedom from want a reality? Were the nations who had been accustomed to relatively high standards of living prepared to accept the implication of this peace aim? Did they realize that, for a long time, this ideal could only be achieved at the price of voluntarily lowering their own standards of living?

Harassed war leaders had more urgent calls on their minds and their time than to work out the implications of their long-range peace aims. Yet it would depend on the answers to these questions whether the vista of the Atlantic City would be more than another wartime *fata morgana*. In his United Nations Day broadcast of 1942, President Roosevelt still predicted with confidence: 'We of the United Nations have the power, the men, and the will at last to assure man's heritage.'

CHAPTER 21

THE MECHANICS OF INTER-ALLIED CO-OPERATION

'After every great war the victors find the making of peace difficult and disappointing.' Mr. Byrnes' broadcast to the American People, July 15, 1946.

UNTIL 1943, political co-operation between the major Allies took place in three forms: through the ordinary diplomatic channels, by way of direct high level contact between the major war leaders, through special representatives, as well as through negotiations between, and conferences of, their Foreign Ministers.

In his report to the House of Commons on November 11, 1943, Mr. Eden summed up his experiences with the improvisations of inter-Allied diplomacy:

'It is absolutely essential that there should be between us special machinery, over and above the ordinary machinery of diplomatic interchange, through which this country and its great Allies can work continuously together, and concert rapidly and efficiently their views on the many political problems which arise out of war. Our whole experience during this war has shown the urgent need for some such machinery, but there have always been geographical or other difficulties which have made it difficult to set it up.'

Actually, by then, these difficulties had to some extent been overcome.

THE EUROPEAN ADVISORY COMMISSION

At the Moscow Conference of October, 1943, the Foreign Secretaries of Great Britain, the Soviet Union and the United States had decided to establish a European Advisory Commission. Its task was to ensure the closest co-operation between the three Governments in the examination of European questions 'arising as the war develops' by the study of such questions and the submission of joint recommendations to the three Governments. The seat of the Commission was to be in London. It held its first meeting on December 15, 1943. Early in 1944, it created an Inter-Allied Committee on Foreign Affairs to keep in touch with the Allied governments-in-exile. In November, 1944, the Provisional Government of France joined the Commission.

The main work of the Commission consisted in drafting recommendations for terms of surrender for Germany, for taking over the occupation zones in Germany and Austria, and for the Inter-Allied control machinery in these countries.

THE ADVISORY COUNCIL FOR ITALY

In 1943, an Allied Mediterranean Commission had been established at Marshal Stalin's request. It consisted of representatives of the Soviet Union, the United Kingdom, the United States and the French Committee of National Liberation. At the Moscow Conference of the Foreign Ministers in October, 1943, it was agreed to transform this Commission into a special Advisory Council for Italy.

In addition to the original representatives, it was decided to include Greek and Yugoslav members 'in view of their special interests arising out of the aggressions of Fascist Italy upon their territory during the present war'. The Council was to deal with matters other than military operations affecting Italy, to advise the Allied Commander-in-Chief on such topics, and to make recommendations for the co-ordination of Allied policy towards Italy to the Governments concerned. The first meeting of the Advisory Council took place in December, 1943.

Following the Armistice with Italy, an Allied Control Commission was set up in November, 1943, side by side with the Advisory Council. Its duty was to supervise Italy's execution of the terms of the Armistice and to see that Italian economy was aligned in support of the war against Germany. It consisted of British and American members only. Backed by Allied Headquarters, this body was the effective authority in Italy, and the Advisory Council was reduced to leading a somewhat shadowy existence. In view of the progressive transfer of authority in Italy to the Government of the new co-belligerent of the United Nations, in September, 1944 the word 'Control' was deleted from the name of the Commission and, in May, 1946, the Commission was wound up.

THE COUNCIL OF FOREIGN MINISTERS AND THE PARIS PEACE CONFERENCE OF 1946

At the Potsdam Conference of 1945 the European Advisory Commission was dissolved. The detailed co-ordinating of Allied policy for the control of Germany and Austria was handed over to the Allied Control Council in Germany, established by a joint declaration of the four occupying powers of June 5, 1945, and to the Allied Commission for Austria under agreements between the occupying powers

of June 28 and July 4, 1945. The other functions of the European Advisory Commission were transferred to the Council of Foreign Ministers.

This body, with its seat in London, was to consist of the Foreign Ministers of the Big Three, France and China. Decisions could be taken only by unanimity. Its immediate task was to draft peace treaties with Italy and the four satellites of the European Axis for submission to the United Nations. It was also to prepare a 'peace settlement for Germany to be accepted by the government of Germany when a government adequate for the purpose is established' and to propose settlements of territorial questions outstanding on the termination of the war in Europe. It was left to the governments participating in the Council to refer to it other matters by agreement.

For purposes of preparing the peace treaties, the Council was to have a varying membership. With regard to each treaty, the Council was to be composed of the members representing those States which were signatories to the terms of surrender imposed upon the enemy State concerned. Thus, for purposes of the Peace Treaty with Italy, the Big Three and France, which for this purpose was treated as a signatory of the terms of surrender, were to constitute the Council. The Peace Treaties with Bulgaria, Hungary and Rumania were to be drafted by the Big Three alone. Great Britain and the Soviet Union formed the Council for purposes of the Peace Treaty with Finland.

A fine distinction was drawn between other members and States not represented on the Council, but directly interested in any particular question. The former were to participate as full members, with the right to vote, in the deliberation of matters directly concerning them. The latter were only to be invited to take part in the discussion and study of such questions. In substance, this procedure differed only in one respect from those adopted at the Peace Conferences of Vienna and Paris. Even amongst the Big Three, the influence of the world powers on the drafting of the peace treaties was graded. Soviet Russia had become retrospectively a party to the original instrument of surrender regarding Italy. The United States, not having declared war on Finland, was not a party to the Finnish terms of surrender. Thus, there was a slight preponderance in favour of the Soviet Union as compared with the two other major powers.

On his return from Potsdam, President Truman did his best to smooth the ruffled feathers of the States excluded from these deliberations. In his radio address on the Conference (August 9, 1945), he explained that the Council was to be the continuous meeting

ground of the five 'principal governments' for reaching common understanding regarding the peace settlements: 'This does not mean that the five governments are going to try to dictate to, or dominate, other nations. It will be their duty to apply, as far as possible, the fundamental principles of justice underlying the Charter adopted at San Francisco'. The smallness of this circle would assure 'speedier, more orderly, more efficient and more co-operative peace settlements than could otherwise be obtained'. In any event, all the peace treaties would have to be 'passed upon by all the nations concerned'.

The Australian Prime Minister, in a speech of August 28, 1945, claimed the right for Australia to participate in the discussions of the Council of Foreign Ministers on the Peace Treaty with Italy. The Soviet Union, however, retorted by demanding the participation of Byelorussia and the Ukraine in the deliberations of the Council. All that Australia was able to obtain was a hearing on the Italo-Yugoslav frontier.

During the first session of the Council in the autumn of 1945, France and China were to learn what it meant to be world powers on sufferance. At their first meeting of September 11, the Ministers had unanimously agreed that all five members of the Council should be present at the discussions of each of the peace treaties, but that voting should take place on the basis of the 'four-three-two' formula. Nine days after, however, M. Molotov discovered that they had all been guilty of a breach of the Potsdam Agreement, and that the Council's previous decision had been illegal. Unmoved by the presence of the Chinese and French members of the Council, M. Molotov pressed for the complete exclusion of China from all the discussions on the European peace treaties and of France from all save the discussions on the Peace Treaty with Italy. The French and Chinese representatives had to listen to these acrimonious debates in rotation and even presided over some of these perorations. M. Molotov carried his point.

Emboldened by his success, the Soviet Foreign Minister demanded the removal from the record of the Council's decision of September 11, and the substitution of a new version, bearing the original date. With this move, however, he overplayed his hand, and the London session of the Council was adjourned without approving any record of its work. At the meeting of the Council in Paris in April, 1946, M. Molotov showed his supreme contempt for the ad hoc principles for which he had so fiercely fought in London and moved that France should participate in all the meetings of the Council. ✓

To judge by M. Molotov's long and varied diplomatic record

with the United Nations—and their enemies—his somewhat erratic tactics should not be attributed to the vagaries of an uncontrolled temper. For the true Stalinist, principles and arguments are merely means to an end. They can, and must, be varied according to changing tactical requirements. As M. Molotov had been dissatisfied with the way in which discussions went at the first session of the Council, France and China provided suitable whipping boys. When the Council met in Paris, the forthcoming constitutional referendum and the French elections made it advisable for the Soviet Foreign Minister to show to his hosts the more amiable—or less disagreeable—side of his diplomatic personality.

A more charitable interpretation of M. Molotov's tactics recommended itself to Mr. Byrnes in his broadcast of July 16, 1946 on the results of the Paris meeting of the Council of Foreign Ministers: 'I sometimes think our Soviet friends fear we would think them weak and soft if they agreed without a struggle on anything we wanted, even though they wanted it, too.'

At the second session of the Council in July, 1946, agreement was reached on submitting the five draft treaties with Italy, Bulgaria, Finland, Hungary and Rumania to a peace conference. On a good many questions, the Council had failed to reach agreement. Disagreement was most pronounced on questions such as the economic clauses and those regarding the settlement of disputes between contracting parties; reparations from Bulgaria, Hungary and Italy; the frontiers between Italy, Trieste and Yugoslavia, between Bulgaria and Greece, and between Hungary and Czechoslovakia, and the regime for Trieste. Alternative drafts had, therefore, to be submitted to the Peace Conference. Twenty-one States, which were considered to have made substantial military contributions to the defeat of the European enemy States, were invited.

The Conference met in Paris from July 29 to October 5, 1946. It had a purely advisory character. Even so a fierce dispute arose between the Soviet Union and the other members of the Council on the number of votes—simple or two-thirds majority—which should be required for a recommendation of the Peace Conference to be passed on to the Council of Foreign Ministers.

A compromise was reached. In the rules of procedure suggested by the Council of Foreign Ministers to the Peace Conference, it had been provided that votes in the Conference and in its commissions should require a two-thirds majority. The Conference was, however, left free to determine for itself its organisation and procedure. With a majority of fifteen against six—the Soviet Union, Byelorussia, Poland, the Ukraine and Yugoslavia—it decided

to distinguish between two types of resolutions: recommendations adopted by simple majority and by a two-thirds majority. Both were, however, to be submitted to the Council of Foreign Ministers. In fact, Mr. Byrnes undertook to make his own any recommendation which had achieved a two-thirds majority.

Behind this wrangle were simple mathematical calculations. Some of them were brought into the open in Paris by the delegate of the Union of South Africa. The four powers had committed themselves to vote in favour of any draft on which they had reached agreement in the Council of Foreign Ministers. This left seventeen votes which were not tied in advance on such issues. A simple majority of eleven, therefore, represented in fact a two-thirds majority of the free votes. On the assumption that rival *blocs* between the major Allies had come into existence, the Soviet Union could, if necessary, count on the five additional votes of Byelorussia, Czechoslovakia, Poland, the Ukraine and Yugoslavia. Thus, no two-thirds vote of the whole conference could ever have been carried against the will of the Soviet Union. Similarly, on the assumption of a two-thirds majority, the oligarchy of the Four Powers only required four of the free votes to block any amendment.

In its formal aspects, the Peace Conference of Paris of 1946 was very different from its predecessor of 1919. It was merely an intermediate stage in a chain which commenced and ended in the conclave of the Council of Foreign Ministers. The States invited to the Paris Conference, and the additional States whom the Conference asked to make known to it their views on the draft treaties, were free to voice their criticism of any aspect of the Peace Treaties and not only of those matters in which they were directly interested. Furthermore, they were able to make constructive proposals of their own.

The defeated States—Austria, too, was invited by the Conference—were permitted to make any points they wished. Contrary to the situation in 1919, the 'principal' Allies did not even pretend to maintain at least an outward unity against their ex-enemies. The Western powers held their guarding shields over Italy, and the Soviet Union openly backed territorial demands by Bulgaria against Greece, one of the United Nations. Finally, in contrast to the Paris Peace Conference of 1919, the proceedings of the Conference and of its commissions were public.

Forty-seven of the fifty-three recommendations adopted by the Conference with a two-thirds majority—and twenty-four of the forty-one recommendations adopted by a lesser majority—were accepted in substance by the Council of Foreign Ministers. Most of them referred to topics on which the Council had not reached agree-

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ment. It is hard to imagine that, even without the Peace Conference, agreement on any of these issues could not have been reached within the Council. This procedure, however, enabled the members of the Council to agree gracefully to these compromise solutions and, in this way, to demonstrate their willingness to accept the principle of international democracy. Still less did the hearings granted to the ex-enemy States affect these peace settlements. The publicity of the meetings had the negative effect of substituting platform oratory for intimate deliberations and of magnifying differences of opinion into clashes between hard and fast principles. A possibly positive aspect of the public exhibition of Allied disunity and of their open sponsorship of some of the ex-enemy States was the educational, though rather depressing, effect on public opinion in the United Nations.

At its third session in November and December, 1946, the Council of Foreign Ministers considered the recommendations of the Peace Conference of Paris and reached agreement on the Peace Treaties with Italy, Bulgaria, Finland, Hungary and Rumania. Each treaty was signed by those members of the Peace Conference of Paris who had been at war with the enemy State concerned, and by that State. Other members of the United Nations who had declared war against these States could adhere to these Treaties. In the case of the Peace Treaty with Italy, Albania, too, was granted this right. On February 10, 1947, the five treaties were signed in Paris.

Since 1947, the Council of Foreign Ministers and their deputies have tried in vain to reach agreement on peace treaties with Germany and Austria. On April 24, 1947, the Council of Foreign Ministers established a special Austrian Treaty Commission. It was charged with the task of reporting 'without delay' to the Council. With periodic interruptions, the Deputies of the Foreign Ministers have been engaged since then on the slow-motion picture of the draft Peace Treaty with Austria. By 1950 they had held 259 meetings, and still the Soviet Union found new issues to raise.¹

THE FAR EASTERN COMMISSION

After the surrender of Japan in August, 1945, the United States proposed to China, Great Britain and the Soviet Union the establishment of a Far Eastern Advisory Commission with its seat in Washington. It was to consist of the Big Five, the other Pacific powers (Australia, Canada, The Netherlands, New Zealand and the Philippines) and India. The functions of the Commission were to be to make recommendations to the participating governments on the

¹ See below, p. 400 et seq.

formulation of policies, principles and standards for the fulfilment by Japan of her terms of surrender; on the steps necessary and on the machinery required to ensure strict compliance by Japan with the instrument of surrender, and on other matters assigned to the commission by agreement of the participating governments.

Great Britain and Australia had made reservations regarding the purely advisory character of the Commission, but did not press the point. The Soviet Union, however, refused to join a merely consultative body and stood out for an Allied Control Commission on the pattern of the Inter-Allied Control Council for Germany. The first meeting of the Advisory Commission took place in October, 1945. A compromise with the Soviet Union was reached at the Moscow meeting of the Foreign Ministers of the Big Three in December. The Far Eastern Advisory Commission was transformed into the Far Eastern Commission. It had the same members and fulfilled essentially the same functions as its predecessor. Provision was, however, made for consultation with non-members regarding matters of particular interest to such nations.

In addition, an Allied Council for Japan, with its seat in Tokyo, was created. Its Chairman and United States member was the Supreme Allied Commander in Japan, or his deputy, and its other members were representatives of China and the Soviet Union and one joint representative of Australia, Great Britain, India and New Zealand. The function of this Council, too, was limited to that of an advisory and consultative body. In the event of disagreement between a member of the Council and the Supreme Commander on questions of a change in the regime of control, fundamental changes in the constitutional structure of Japan, and a change in the Japanese government as a whole, the Supreme Commander was to withhold the issue of orders on these questions pending agreement being reached in the Far Eastern Commission. Voting in the Far Eastern Commission takes place by majority, but the majority must include the representatives of the Big Three and of China.

Compared with the Far Eastern Commission, the Allied Council has shrunk into practical insignificance. From the point of view of the United States, it is easier to handle a commission in Washington than in Tokyo, and such a body far away from the object of its advisory work has less nuisance value than a Council on the spot.

JOINT COMMISSION ON KOREA

At the Moscow Conference of 1945, a Joint Commission for Korea was established, consisting of representatives of the Soviet Union and of the United States. It was to consult with 'Korean democratic

parties and social organisations' in order to prepare recommendations for an agreement on four-power trusteeship for Korea during a maximum interim period of five years. Its recommendations were to be submitted to the Big Three and China for approval. In the first two years of its existence, the Commission held forty-nine fruitless meetings. Without real hope of reaching any constructive results, it held intermittent meetings of an entirely negative character until the end of 1947. Then Korea, too, merged into the international frontier between East and West, and not even the semblance of inter-Allied co-operation was any longer maintained.²

THE PATTERN OF INTER-ALLIED CO-OPERATION

The pattern which emerges from the analysis of these institutions is symptomatic for the relations between the major Allies in the Second World War. In principle, the institutions to which any particular matters are delegated are only entrusted with advisory functions. If they are granted any power of decision, as in the case of the Allied Control Council for Germany or of the Allied Commission for Austria, the unanimity principle applies. In the case of the Far Eastern Commission, the majority principle works only against members other than the Big Four in the Far East. Both types of device are merely another form of saying that—as it was put by Mr. Eden in 1943—‘while we three are together, there is nothing we cannot achieve. If we are not together, there will be nothing that we can achieve.’

The real situation was revealed in public at the Paris Peace Conference. Whenever there was disagreement between the Big Three, the necessary concomitant of disunity among the chief Allies was a tendency on the part of the members of the Conference to separate into antagonistic *blocs*. It was one of M. Molotov's main arguments against the rule of simple majority that this would result in the imposition of the views of one *bloc* on other States. The same criticism applied, however, in reverse to the principle of a two-thirds majority.

The truth of the matter was that, on the assumption of disunity between the Soviet Union and the Western Powers, the formation of such *blocs* was inevitable. This was what actually happened at the Peace Conference of Paris. In his speech of October 7, 1946 to the Conference, General Smuts summed up this experience: ‘Those who scan the debates and votes will be struck by the constancy with which those whom I may call the Slav group, on the one hand, and

² See below, pp. 418 and 515 et seq.

the western group, on the other, have voted against each other. It has been the revelation of this conference.'

These inter-Allied institutions have left unaffected the traditional relations between members of the international oligarchy.³ Each of them still insists on his absolute veto. The attitude taken by the Soviet Union regarding the participation of France and China on a footing of equality in the work of these institutions is in accordance with the best traditions of greater power exclusiveness. The place which these two powers were allowed to occupy in fact was substantially the same as that assigned to other rank and file members of the international aristocracy within the United Nations. The position of the defeated countries varied according to the position envisaged for them by their respective sponsors within their own systems of post-war alignments.

With the exception of the improvised top level co-operation and the Council of Foreign Ministers, the territorial scope of each of these institutions was strictly limited. It would, however, be euphemistic to classify these wartime and transitional agencies as regional institutions. It was not their task to translate general unity among the major Allies into concrete decisions or recommendations in accordance with the special needs of the areas concerned. On the executive side, each of the occupation and armistice administrations was under the exclusive control of the military authorities of those United Nations which had liberated, or conquered, these countries.

In Eastern Europe and in the Balkans, the Allied Control Commissions worked during the armistice period 'under the general direction of the Allied (Soviet) High Command'. On the basis of an Anglo-United States understanding, Great Britain was preponderant in the Mediterranean area, especially in Italy and Greece, and, in conjunction with the Dominions, in South-East Asia. In Japan it was left to the Supreme Allied Commander, General MacArthur, to take such steps as he deemed proper to supervise compliance with the terms of unconditional surrender. Such work as is done by the Far Eastern Commission proceeds on the clear understanding of the limits within which the United States and her pro-consul are prepared to brook advice.

In Germany and Austria, the pattern of exclusive control repeated itself until joint administration was superimposed on the basic *de facto* scheme. It worked as long as there was at least a semblance of unity between the occupying powers. When this began to break down, the conflicting elements in the Allied Control Council for

³ See above, p. 113 *et seq.*

Germany and in the Allied Commission for Austria tended to neutralise each other. In each of the occupation zones, the basic pattern re-emerged. Berlin was reduced to chaos and Germany and Austria divided in fact, if not in name.⁴ The relatively smooth inter-Allied co-operation in Vienna stands out as a lonely memorial to the bygone days of Allied wartime unity.

There is, however, one essential difference between the situation in Germany and Austria. Within the limits of its Constitution Austria is free to pass any legislation, provided that it is not vetoed by the Allied Commission. Each of its members can delay promulgation of a statute by one month. Yet unanimity is required in the Allied Commission to veto such a statute. As long, therefore, as the Austrian Government has the support of the three Western representatives, it can ignore the wishes of the Soviet Union. Austrian legislative policy is firmly based on this axiom.

How does the work of the peace-makers of the Second World War in its formal aspects compare with that of their predecessors of 1919?

The peace-makers of 1919 may be charged with undue haste, but such censure requires qualification. The reparation settlement with Germany was only put on a working basis in 1924 by means of the Dawes Plan, and even this scheme required drastic overhauling five years later in the Young Plan. Right from the start, the Peace Treaty of Sèvres of 1920 was inoperative, and only in 1923 was a peace treaty concluded with Turkey at Lausanne.

The leisurely progress made with peace-making after the Second World War was certainly due in part to fundamental disagreement between the Western Allies and the Soviet Union. Yet this is not the whole of the story. There had been many voices during the Second World War who, like Mr. Carr in his *Conditions of Peace* (1942), counselled that 'next time, if we wish to avoid the same failure of adaptation, it will be prudent to let the work of economic reconstruction proceed a long way before attempting to create the rigid political forms of a lasting settlement'. As late as October, 1946, Mr. Bevin echoed this highly debatable thesis in his speech to the Plenary Session of the Peace Conference of Paris: 'The further we move away from war itself the better chance moderation and reason have of making themselves felt.'

Yet time is a neutral factor. It depends on the political post-war relations between former major allies whether economic reconstruction can have an integrating effect or whether, in an atmosphere of mutual antagonism, it does the reverse. It is a choice between two evils: to guard more against the fierce passions of a recent war

⁴ See below, p. 381, *et seq.*

or against growing disunity between the potential enemies of the next one.

In deciding in favour of a speedy peace settlement, the peace-makers of 1919 were at least able to arrive at common solutions of the main issues. In 1945, and still more so subsequently, agreement and weight of decided questions stood in inverse ratio. Already in 1946 Mr. Churchill expressed his disgust to Mr. Sumner Welles (*Where Are We Heading*, 1947) over the tempo of peace-making after the Second World War and thought that it was 'enough to make one despair of the future'.

The delay in peace-making imposed an unbearable strain on the Allied machinery for mutual co-operation. The assumption on which it had been based was unity between the major Allies. When this was increasingly replaced by growing dissension and hostility, the machinery necessarily broke down. Where any of the Allies exercised exclusive de facto control, unilateral improvisation was the only alternative. Where joint action was imperative, but out of the question, chaos or self-neutralisation of the Allies was the inevitable consequence. Necessarily, the defeated nations were both the chief victims and *tertii gaudentes* in this deplorable spectacle with the age-old title: How to win a war and lose a peace.

SHAPING THE NEW WORLD

' Acts are the tests of words.' J Bentham, *Anti-Machiavel*
(1789)

IN any type of social relations, an unbridgeable gap separates the ideal from the reality. In particular, the higher the aspirations in an environment such as international society, the greater the discrepancy is likely to be. Peace-makers share with other fallible human beings the risk of erring either on the side of starry-eyed idealism or of mere opportunism. It is a high accomplishment at any historical moment to be able to distinguish with some precision between mere potentialities and actual possibilities. In any case, such judgment must always remain highly subjective in anticipation and largely hypothetical in retrospect. ✓

Had the war leaders of the United Nations been content with basing their peace aims on the accepted patterns of power politics, they would indubitably have been accused of missing a golden opportunity. As it was, they, and the United Nations, perhaps set the stakes too high and, therefore, no less inevitably failed to live up to the standards which they had set themselves. It may be that this failure goes to prove that mankind will never grow up mentally to a sufficient level to replace power politics by some kind of community relations in the proper sense. Yet to attempt the seemingly impossible is in the best tradition of Western civilisation.

For good or evil, endeavours of this kind have created our modern world. Beyond this, the ideal of a world community is accepted both by Christianity and Communism, two of the most potent spiritual forces of our age. Thus, the Atlantic Charter and the other peace aims of the United Nations may truly claim to express the aspirations of world civilisation. Faced with a dilemma of such dimensions, the primary task of the student of international relations is not to judge, but to understand. To do so, it is essential to measure accurately in each individual case the gap—or gulf—between ideal and reality and to explore the causes of whatever discrepancies there may be. It then becomes possible to comprehend the implications and consequences of the steps actually taken by the peace-makers of our time.

Some may prefer to go further. In doing so, they are perhaps unmindful of the profound wisdom which bids us to judge not, that

ye be not judged. In any case, such judgment is a form of self-criticism for those who themselves have contributed their share to the victory of the United Nations over the forces of barbarism. Those, however, who did, or could do, nothing towards this end—and this applies with particular force to students of international affairs in the ex-enemy countries—would be well advised not to throw stones. They may more profitably reflect on the shape which the world would have taken had their masters won the Second World War. Compared with the evil intentions and with the deeds actually perpetrated by their rulers, any amount of power politics meted out to their countries is sheer charity. For a long time to come, their task should be to remember and to atone. Admittedly, this view runs counter to a current tendency to forgive and forget. Yet, without repentance, forgiveness is nothing more than opportunism and sentimentalism.

Criticism, therefore, must proceed on two levels. The acts of the peace-makers of the Second World War may be judged in terms of either power politics or of the community standards which the United Nations had set themselves. The first form of criticism is open to anyone. The second is one of self-criticism *within* the United Nations.

In examining the work of the peace-makers of the Second World War a distinction must be made. Their work in the fields of international organisation, disarmament and economic co-operation can be most conveniently reviewed subsequently in the context of the international institutions under the United Nations.¹ On the other hand, the implementation of the Atlantic Charter and related subsequent declarations outside the new collective system offer a more suitable starting point for our investigation.

Especially does the treatment of the defeated enemies of the United Nations fall within this *domaine réservé*; for, in accordance with Article 107 of the Charter of the United Nations, 'nothing in the present Charter shall invalidate or preclude action, in relation to any State which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorised as a result of that war by the Governments having responsibility for such action'. The peace-makers had decided that the United Nations was to be spared the burden of peace-making and the responsibility for the settlements to be imposed on the enemies of the United Nations. Blame or merit for the decisions taken was to rest exclusively with the victorious powers.

Each of the major decisions must be analysed against the back-

ground of the earlier wartime commitments which the Allies had undertaken towards each other.

RETRIBUTION

Relatively few difficulties were encountered in honouring the wartime commitments of the Allies regarding the punishment of war criminals.² In accordance with the Moscow Declaration on German Atrocities of 1943, the Allies agreed at Potsdam to bring the major enemy war criminals to 'swift and sure justice'. This decision was implemented regarding the major war criminals of the European Axis by the Four Power Agreement of August 8, 1945. An International Military Tribunal, composed of British, French, Russian and United States members, was established.

The Charter of the Tribunal was declaratory of existing international law in providing for the trial of war criminals charged with war crimes in the technical sense, that is to say, with breaches of the rules and customs of warfare. Equally, the principle that superior orders are at the most a circumstance which justifies the attenuation of the sentence was in accordance with established principles of international law. The introduction of crimes against peace and humanity constituted an innovation.

In the case of the German major war criminals tried at Nuremberg the jurisdiction of the Allies rested not only on international law but also, owing to the destruction of the Hitlerite German State through *debellatio*, on their status of co-sovereigns of Germany. The Allies were, therefore, free to overstep the limits of existing international law with regard to anyone over whom they were entitled to exercise their sovereign jurisdiction within Germany. In view of the participation of the Soviet Union in the fourth partition of Poland and of Russia's preventive war against Finland of 1939, a certain air of hypocrisy necessarily attached to the selected prosecution at Nuremberg of only some of those who had committed crimes against peace.

In January, 1946, General MacArthur promulgated a Charter for the International Military Tribunal for the Far East which was based on the Charter of the Nuremberg Tribunal. In the case of the Tokyo Trial, the competence of the Allies to prosecute Japanese for 'unconventional' war crimes—war crimes in the technical sense are described as conventional war crimes in the Charter of the Tokyo Tribunal—follows from Japan's unconditional surrender. Compared with the length of the Tokyo Trial which did not end until 1948, the pro-

² See above, p. 321 *et seq.*

ceedings of the International Tribunal at Nuremberg were a model of speed. The Tokyo Trial was marred by the opportunist exclusion of the Emperor of Japan from the list of war criminals who were arraigned before the Tribunal and still more so by the 'frontier' manners of its Australian President.

In addition, a multitude of national tribunals of the United Nations dealt with some of the lesser war criminals. By March, 1948, about three thousand five hundred war criminals had been brought to justice in Europe. These trials resulted in approximately three thousand convictions. The figures for the Far East are slightly smaller.

The major German war criminals who were sentenced to various terms of imprisonment are held in the joint custody of the four occupying powers. In the Prison of Spandau Allied co-operation continues undisturbed by the deterioration in the relations between East and West. In turn, one Allied detachment takes over from another the duty of guarding these precious symbols of the once United Nations.

The chief value of the Allied wartime declarations on atrocities consisted in their deterrent effect. When the Nazis and their Allies became doubtful of the outcome of the war, knowledge of the determination of the United Nations to bring war criminals to book was likely to prevent at least some of the crimes which might otherwise have been committed. Furthermore, these declarations served to protect the enemy population from indiscriminate vengeance on guilty and innocent alike. Once victory was won, the trial of the worst offenders was a restrained and civilised response to the challenge of twentieth-century barbarism.

As precedents in any future major war the case law established by these judgments is without much significance. The victors in any third world war would determine retrospectively which—and whose—acts constituted war crimes, crimes against peace and crimes against humanity. The preventive value of these judgments in such a war should not be over-estimated.

In the Second World War, the Allied declarations had such an effect only when the likely outcome of the war became apparent to the rank and file of the aggressor nations. None but a madman is likely to embark on an aggressive war unless he expects his country to be victorious. If he does so in the knowledge that, in case of defeat, the penalty is death, he, and those associated with him, will consider the risk of subsequent trials as war criminals as an additional reason for the most ruthless prosecution of the war. In the Korean War, the United Nations showed little enthusiasm for the applica-

tion of the 'Nuremberg principles' to the aggressors or to the South Korean offenders in their own camp. The Judgments of Nuremberg and Tokyo, the host of similar decisions of national courts and subsequent experiences, have not disproved the thesis that, with few exceptions, there are no war crime trials of the victors.

The most positive result of these trials is the historical evidence which they have brought to light on inter-war diplomacy and on the working of totalitarian State machinery.

RESTITUTION

The spiritual objects of the 'rejuvenated' countries had been demonstrated at an early stage in a song of the Hitler Youth in which it was lustily asserted that 'today, Germany belongs to us, and so will, tomorrow, the whole world'. The Japanese brain wave of the Far Eastern 'co-prosperity' sphere was the version chosen by the honorary Aryan allies of the European Axis for achieving the common object of wholesale spoliation of the countries overrun by their soldiery. The specific German contribution to this sordid subject was the extension of the system of State-organised looting to proscribed groups of their own nationals, especially the Jews.

Implementation of Allied policy³ took place through the control machineries established in the defeated countries, by the imposition of express obligations on Germany's satellites in the armistice conventions and in the Peace Treaties of 1947, and through diplomatic negotiations with neutral countries.

An inter-Allied Agreement of September 20, 1945, promulgated, with effect in Germany as a proclamation of the Control Council, created the legal basis for restitution. In January, 1946, eleven United Nations, which had been occupied by German forces, were declared eligible for restitution by the Allied Control Council. The goods to be restored were determined on the basis of the definition which had been approved by ten of the governments at the Paris Conference on Reparation in December, 1945.

The development inside Germany was symptomatic. Military Government gave the governments of the *Länder* ample opportunity to redeem the German people by their own action. Yet the *Länder* governments feared the 'unpopularity' of such legislation, proposed totally inadequate statutes to Military Government and, in fact, preferred statutes imposed on them by the Occupation Authorities. In leaving action to the Allied Powers, the German people missed one of its few chances of proving that it deplored more than Hitler's

³ See above, p. 322 *et seq.*

lack of success. It is to the credit of the United States Military Government that, in the face of German passive resistance, it was the first to take action of its own in 1947. The British Military Government followed suit in May, 1949 with a Statute on the Restitution of Identifiable Property to Victims of Nazi Oppression in the British Zone of Germany. The British Statute is closely modelled on the United States Law No. 59.

Both provide for restitution to anyone who, during the Nazi regime, had been unjustly deprived of property for reasons of race, religion, nationality, political views or political opposition to National Socialism. In principle, German courts are to decide on claims for restitution, but Boards of Review appointed by British or United States Military Government may annul or modify any decision or order made under this Statute.

In 1949, the Federal Government of Western Germany made a belated attempt at the acknowledgment of collective German responsibility for Hitler's crimes against the Jews. It offered a token payment to Israel which, however, was contemptuously rejected. It would have been wiser if the German Government had limited itself to acknowledge in principle its moral responsibility to make reparation without exposing itself to the reproach of having by implication assessed the life of each murdered Jewish man, woman and child at 2 D-Mark.

Restitution in Austria was carried out under the supervision of the Allied Control Commission. The Austrian Government and Parliament can at least claim to have made a beginning by 1946 with an Austrian statute on restitution. Complications arose from inter-Allied disagreement on what constituted German foreign assets—those in the Soviet zone of occupation in Austria were reserved by the Potsdam Conference for the Soviet Union⁴—and from Austria's policy of nationalisation.

The United States Statement of Initial Post-Surrender Policy for Japan of August 29, 1945 provided that full and prompt restitution of all identifiable property looted by Japan would be required. The Allied Supreme Commander in Japan carried out this directive in close consultation with the Far Eastern Commission. The working assumption regarding property which at the time of Japanese occupation was in areas overrun by the Japanese forces and subsequently removed to Japan was to treat it *prima facie* as looted property. Difficulties emerged in the execution of this programme chiefly in connection with the identification of the owners of property looted in occupied territories and with the damages to be paid by

⁴ See below, p. 400 *et seq.*

the Japanese Government for deterioration of such property since the outbreak of the war.

In the Peace Treaties of 1947 with Italy and with the four satellites of the European Axis detailed provision was made for restitution. Each of the five States had to undertake to return all looted property. In view of the large scale spoliation on the German model of Jewish property in Hungary and Rumania, additional clauses were inserted into the Peace Treaties with those two countries. Both States were to restore property, legal rights and interests which had been the object of sequestration or control on the ground of 'racial, religious or other Fascist measures of persecution'.

Finally, arrangements had to be made with neutral States for the restoration of looted property which had been deposited in these countries. Sweden and Switzerland were the first countries which, by the enactment of decrees and statutes of their own, assisted at least in the recovery of property looted in occupied countries.

In fact, only a fraction of the property which the enemies of the United Nations had illegally appropriated to themselves was ever returned to its lawful owners. Nevertheless, an official United States report of 1946 could justly claim that Allied action represented the 'greatest Lost-and-Found Operation ever known'.

The receivers of these ill-gotten gains in all the aggressor States have shown a remarkable reluctance to part with the fruits of these government-sponsored acts of spoliation. This attitude signally differs from the profuse verbal protestations of distaste with their former masters on the part of their new, and democratically elected, governments. It is telling evidence of the value of the lip services paid by these reconverts to world civilisation.

Standard answers in Germany to challenges on this point are characteristic. The first line of counter-attack is to relate stories of minor acts of pilfering by Allied forces in the first weeks of the occupation of Germany, of the acts of Soviet troops in their occupation zone, of the exploitation of the parts of Germany under French control, of Allied dismantling policy and of the uses made of the occupation of Germany by Allied private competitors for their own advantage. The dismantling policy is bound up with questions of reparation and disarmament. Discussion of this issue, therefore, must be postponed.⁵ To the extent to which the other arguments can be substantiated, they are to the point.

By United Nations standards there is no defence for such acts. Yet such delinquencies are only a mild dose of the medicine to which Germany has treated all occupied countries. They are retaliation in

⁵ See below, p. 349 *et seq.*

kind. The question which Germans should ask themselves is how it came about that the armies of the United Nations ever had to occupy Germany.

More astute representatives of the new Germany take this retort for granted. They prefer to concentrate on the wrongs inflicted on the Germans who had been driven out of Czechoslovakia, Poland and East Prussia and had lost all their property. There is no need to defend the inhumanities with which many of these expulsions have been carried out by the Czechoslovak, Polish and Soviet authorities. Yet those who think themselves entitled to set off one wrong against another should reflect on how many of the Germans in Czechoslovakia and Poland had been active fifth columnists before the occupation of those countries by the Third *Reich*. They should realise the essential difference between their own behaviour towards citizens of both their own countries and of territories occupied as the result of wanton aggression and the retaliation in kind of nations who had been treated by Germany as were Czechoslovakia, Poland and the Soviet Union.

There can be pity for the individual Germans who reaped the whirlwind sown by their acclaimed leaders. Yet a good many of those expelled from Poland had been established there on the farms and in the dwellings of Poles driven from their homes by the German invaders. Thus, these refugees are a poor cloak for those Germans who still enjoy the fruits of Nazi crimes. Finally, the treatment which these German refugees from the East have received from the Germans in Western Germany themselves is not exactly an inspiring example of self-sacrifice. It suggests that Germans have still to learn how to practice community spirit among themselves before charging any of the United Nations with lapses from the observance of community standards towards their enemies.

REPARATION

Only in the concluding stages of the war did the Allies begin to attack seriously the question of reparations. As early as 1941, at the Moscow Conference, Marshal Stalin had raised the matter, but he could not bring the British and United States representatives to face the issue. Great Britain and the United States were haunted by their experiences with German reparations after the First World War.

Reparations in kind on any large scale from current German production were then unacceptable to the victorious nations as it was feared that they would lead to an increase in unemployment in these countries. Reparations in gold or foreign currencies meant higher

German exports, a considerable expansion of German industry and growing competition in the world markets. Both methods were tried, but deliveries in kind formed only an insignificant part of German reparations. Their otherwise probable effects on Allied economies were mitigated by large-scale United States and Allied private investments in Germany which, under Dr. Schacht's handling of German finances, were duly frozen. Thus, in the end, Germany received at least as much by way of foreign loans as she had ever transferred as reparation payments. The victors had paid their own reparations.

In a speech on October 29, 1934, the German wizard of finance commiserated with his victims in these touching words: 'I have the greatest compassion for the foreign holders of German bonds who, believing what they were told in their countries, thought they were making a good investment by subscribing to German loans'. Actually, Germany did repay her foreign loans, but in forms which her creditors had not envisaged. With the help that foreign capital had so generously granted to Germany, she modernised her industries and produced all those weapons which, in the course of the Second World War, showered high explosives and metal so indiscriminately on creditors and non-creditors alike.

The Big Three were united in an understandable desire not to repeat these experiences of the past. The different structure of their economies, however, made the Allied leaders inclined to favour different forms of reparations. They were agreed on the uselessness of demanding huge money payments, but were not equally enthusiastic on reparations in kind from current production. In a planned economy deliveries in kind from the current production of a reparations debtor can be absorbed without undue difficulties, whereas they are more likely to cause serious dislocation in a capitalist environment.

At the Crimea Conference it was decided that, in principle, Germany should pay reparations. To judge by Mr. Byrnes' record (*Speaking Frankly*, 1947), President Roosevelt was worried about the danger of another reparations bill being footed in the end by credulous American investors. Mr. Churchill felt concerned, lest the Allies who, for an interim period, would have to maintain Germany, would actually have to pay the German reparations. He agreed, however, with the removal of plants and factories being 'to a certain extent' a proper step. Yet in Marshal Stalin's view, the errors of Versailles and after could be avoided if this time there was not to be any transfer problem.

The Soviet proposal of a total of German reparations of twenty

milliard dollars, half of which should go to the Soviet Union, was accepted by President Roosevelt and Mr. Churchill as a basis for discussion in the Reparations Commission. The Commission was to be established in Moscow and to consist of representatives of the Big Three. The guiding principles were that Germany was to pay in kind for the losses caused by her to the Allied nations in the course of the war. Reparations were to be received in the first instance by those countries which had borne the main burden of the war, had suffered the heaviest losses and had organised victory over the enemy. Finally, reparations in kind were to be exacted in three forms: removal of capital equipment and transfer of German assets abroad with the chief purpose of destroying the war potential of Germany, annual deliveries from current German production for a period to be fixed, and use of German labour (Protocol of the Crimea Conference—Cmd. 7088, 1947).

At the Potsdam Conference, the attempt made at Yalta to fix a total sum for German reparations was abandoned. The reason was that it would have been impossible to compute the value of the wholesale removal of property as 'war booty' by the Russians even prior to the Berlin Conference. As President Truman tactfully put it in his report on the Potsdam Conference (August 9, 1945), the formula adopted in preference to taking reparations by zones was thought to 'lead to less friction among the Allies than the tentative basis originally proposed for study at Yalta'.

The foreign assets of Germany were divided in such a way that those in the satellite countries of the European Axis and in the Soviet Zone of Austria were allocated to the Soviet Union. The last item still forms a bone of contention between the Western powers and the Soviet Union. The former contend that German assets are only those which existed before Austria's annexation by Germany. In the view of the Soviet Union, the term includes the enterprises taken over subsequently by Germany.

The case of the Western powers is strong in equity, but weak in law. The Western powers hold that the Soviet attitude is incompatible with the Moscow Declaration on Austria of November 1, 1943, according to which Austria was to be treated retrospectively as the 'first country to fall a victim to Hitlerite aggression' and to 'be liberated from German domination'. Furthermore, the signatories regarded the annexation imposed upon Austria by Germany in 1938 as 'null and void'. In the same document, however, Austria was reminded of the fact that she had a responsibility which she could not evade 'for participation in the war on the side of Hitlerite

Germany, and that in the final settlement account would inevitably be taken of her own contribution to her liberation'.

In *Speaking Frankly* (1947), not even Mr. Byrnes contended that this Declaration committed the Soviet Union to treat as Austrian assets those transferred to Germany after 1938. He based his argument on the Allied Declaration of January 5, 1943 'which declared that transfers of property obtained by force or duress would not be recognised'. In fact, this Declaration, which had been issued prior to the Moscow Declaration on Austria, expressly said that it was a formal warning to all concerned, 'and in particular to persons in neutral countries'. It did not, however, impose any legal obligations on the signatories in their relations with each other or with third parties to treat such transactions as null and void. In the following paragraph this position was made still more abundantly clear. The governments concerned merely reserved their right to declare invalid any of the transactions enumerated in the Declaration.

In equity, the case of the Western powers is stronger; for, at the Potsdam Conference, it had been agreed that reparations should not be exacted from Austria. In fact, the Soviet interpretation of the term 'German foreign assets' in Austria amounted to a demand for considerable reparations from Austria under another name. As in other instances of more recent relations between East and West—notably the failure to secure in the form of a treaty the Western rights of transit through the Soviet Zone to Berlin—Western legal staff work is far from impressive. ¶ J

German foreign assets in all countries other than those specifically mentioned before were reserved to the United States, the United Kingdom and other countries entitled to reparations. The Soviet Union undertook to settle the reparations claims of Poland from her own share of reparations and renounced any claims to gold captured by the Allied troops in Germany.

For the rest, the Soviet Union was to satisfy herself from German assets within her own zone of occupation in Germany, and the other powers from those in the Western zones of occupation. In view of the preponderance of German industry in the Western zones, the Soviet Union was to receive in addition 10 per cent of such industrial capital equipment in the West as was unnecessary for German peace economy. This was to assure that, in fact, the Soviet Union received approximately half of the capital equipment to be taken out of Germany. A further 15 per cent was earmarked as an equivalent for food and commodities to be delivered from the Eastern to the Western zones.

The Reparations Commission, which, for this purpose, was to

include France, was to settle the guiding principles, and the Control Council for Germany the amount and character of the industrial equipment unnecessary for the German peace economy. Finally, the zone commander in the zone from which the equipment was to be removed had to give his approval. The amount of equipment to be removed was to be determined within six months, and the whole transaction to be completed within a further two years. It was further agreed that these payments of reparations in kind should leave enough resources to enable the German people to subsist without foreign assistance. The proceeds of exports from current production and stocks were, therefore, to be available in the first place for payment for such imports.

Under a separate heading of the Potsdam Agreement, the German merchant fleet—with the exception of German inland and coastal ships required for the maintenance of the basic German peace economy—was equally divided between the Big Three. The United Kingdom and the United States undertook to compensate out of their share other Allied States whose merchant marines had suffered heavy losses during the war, and the Soviet Union was to provide out of her share for Poland.

The execution of this scheme of reparations hinged on what came to be known as the German Level of Industry Plan which was adopted by the Control Council for Germany on March 27, 1946. It assumed average living standards in Germany not exceeding those of continental Europe, excluding the Soviet Union, and the treatment of Germany as a single economic unit. The maximum of the production capacity of the German steel industry was fixed at seven and a half million tons.

The general effect of the Plan was estimated to be a reduction in the level of German industry to fifty or fifty-five per cent of the pre-war level in 1938 when German rearmament production was already near its peak. Yet even by the time when this plan was agreed, one of its main assumptions had proved to be unfulfilled. For reasons which in Western and Eastern eyes diametrically differ, none of the occupying powers acted as if Germany were to be treated as an economic unit. Thus, the question of German reparations quickly merged into the wider issue of the German problem over which the Western Allies were divided among themselves and over which they were still more at loggerheads with the Soviet Union.⁶

✓ In the case of Italy the reparations problem was complicated by the fact that, since the Armistice of 1943, the Italian Government and armed forces had increasingly actively co-operated with the Allies,

⁶ See below, p. 381 *et seq.*

and that Italy had been accepted as a co-belligerent. Furthermore, Great Britain and the United States had spent £165 million on maintaining the Italian population and, through UNRRA, a further £100 million on relief and welfare in Italy. They were not prepared to have this work of recovery undone by means of large scale reparations from Italy which, in effect, would be paid out of their pockets. Thus, the Western Allies advocated lenient treatment for Italy, and the Soviet Union stood out for substantial reparations to herself and to the other victims of Fascist aggression.

A compromise was reached by which all Allied and Associated Powers could satisfy their reparations claims out of Italian assets under their control. The United Kingdom and the United States promptly waived their rights. In addition, the Soviet Union received 100 million dollars as reparations, and Albania, Ethiopia, Greece and Yugoslavia together a further 260 million dollars. These reparations were to be made from Italian factory and tool equipment designed for the manufacture of war material and not readily convertible to civilian purposes.

Russian reparations were to be taken from Italian assets in Bulgaria, Hungary and Rumania and, after an interval of two years, from Italian current production. Precautions were taken that these deliveries should not interfere with the economic reconstruction of Italy nor impose additional liabilities on other Allied or Associated Powers. The States entitled to reparations from current Italian production have to furnish to Italy on commercial terms the materials which are normally imported into Italy and which are needed in the manufacture of reparation goods. Payment for these goods is made by deducting the value of the materials furnished from the value of the goods delivered.

When it came to fixing reparations from the satellites of the European Axis, it became the turn of the Soviet Union to emphasise the assistance given by Bulgaria, Hungary and Rumania to the Allies in the concluding stages of the war. Finland, Hungary and Rumania had to pay 300 million dollars each, Hungary to the Soviet Union and Yugoslavia, and Finland and Rumania to the Soviet Union. Bulgaria was let off with a payment of 70 million dollars to Greece and Yugoslavia against the 125 million dollars which the United Kingdom and the United States had considered to be a more appropriate figure. In all cases, the payments were to be made in kind, especially from the natural production of these countries, and spread over a period of eight years.

In the Proclamation defining the Terms for the Japanese Surrender issued during the Potsdam Conference by China, Great

Britain and the United States 'just reparations in kind' were demanded from Japan. As in the case of Germany, the elaboration of a reparations policy regarding Japan was complicated by unilateral Soviet removal of 'war booty', especially in Manchuria. In the Directive on United States Post-Surrender Policy for Japan of September 6, 1945, two basic principles were laid down. In the first place, Japanese property outside the territories to be retained by Japan was to be made available as reparations. Secondly, capital equipment, goods and facilities which were not necessary for a peaceful Japanese economy or for the supply of the occupying forces were to be used for this purpose.

On May 13, 1946, the Far Eastern Commission issued a statement on Initial Reparations Policy. It recommended that Japanese army and navy arsenals, aircraft plants and certain light metal establishments should be made immediately available for reparations. In the selection of individual plants, reparations programmes should reinforce the occupation policy of dissolving the large industrial and banking combines in Japan. As an interim measure, the United States Government directed General MacArthur in 1947 to make available 30 per cent of movable Japanese industrial equipment for shipment to China (15 per cent), the Dutch East Indies (5 per cent), the Philippines (5 per cent) and to the United Kingdom for Burma, Hong Kong, Malaya and North Borneo (5 per cent). The Australian, French, Indian and Soviet members of the Far Eastern Commission strongly protested against this unilateral American action. The Far Eastern Commission, however, never succeeded in working out a final schedule of reparations percentage shares and, with an announcement of the United States member of the Far Eastern Commission at the meeting of May 12, 1949, reparations deliveries of Japanese capital equipment came practically to an end.

Considering the purposes which reparations are meant to fulfil, the payments in kind exacted from the totalitarian aggressors are at the most fractions of the ravages inflicted by them on the United Nations. Even compared with the daily costs of the war to any of the major Allied and Associated Powers, they are completely insignificant.

√ (According to an estimate of the Inter-Allied Reparation Agency—the body created by the Paris Agreement of December 21, 1945 for an equitable division of reparations from the Western zones of Germany—altogether 367 German plants with a value of little more than 150 million dollars had been distributed by the end of 1948. Even if their real value were double or triple this amount, it would not make much difference.)

These figures should be compared with the annual contributions

made by occupied countries to the German budget during the Second World War. According to the calculations of the British Ministry of Economic Warfare (Statement in the House of Commons, October 26, 1943), they amounted every year to £1,700 million. German industrial capacity in the Western zones has been diminished through dismantling by, at the most, 8 per cent of the 1945 capacity (estimate made in November, 1949 by the *Bremer Ausschuss für Wirtschaftsforschung*). Similar to Allied reparation policy after the First World War, Allied dismantling policy in Western Germany is likely to be a blessing in disguise for German industry; for, with American help, most up-to-date machinery is being installed on a considerable scale, and German factories are forced to re-equip themselves on the footing of greatest efficiency.

Compared with the primary aims of the Western powers of putting the parts of Germany under their control economically on their own feet again and of reintegrating Western Germany into Western Europe, reparations from Germany were increasingly considered by the Western powers as a subordinate objective. Thus, it was not surprising that only mild attempts were made by the Western Allies to secure from neutral powers the considerable assets held by German creditors or their nominees in countries such as Spain, Sweden, Switzerland or Argentina.

The effects on German public opinion of the more ruthless reparations policy pursued by the Soviet Union in Eastern Germany, prompted by her urgent needs for consumer goods, proved the tactical wisdom of Western moderation in a world divided into two camps. Even so the delays involved in the execution of the modest dismantling programme carried out in Western Germany produced psychological reactions which, after 1947, made the completion of this programme seem hardly worth while. Similarly, the Soviet Union regarded reparations from the ex-enemy States in her sphere of influence primarily as a means of demonstrating the value to these States of her diplomatic support in inter-Allied negotiations and, secondly, as a means of strengthening her economic hold over these countries.

The failure of Allied reparations policy in Japan proves still more clearly how little, in fact, reparations are related to retribution and how much they are a barometer of inter-Allied relations. Admittedly, the wholesale removal, under the euphemistic title of 'war booty', of Japanese- and Chinese-owned industrial equipment from Manchuria by the Soviet troops was not a propitious start for fixing the reparations percentage of any of the United Nations concerned. In addition, the United States, who was left entirely responsible for the maintenance of the Japanese people, had an understandable

interest in making Japan self-supporting again as soon as possible. Finally, corresponding with the advance of Communism in China, the more extreme wartime views on the Japanese menace gave place to a wave of wishful thinking on the conversion of the Japanese people to the values of Western civilisation and of democracy. Actually what had changed was not Japan, but the political function of an American-controlled Japan in present-day world conditions."

Thus, Allied reparations policies in Europe and the Far East have an essential feature in common. The condition of an effective reparations policy—unity among the Allies of the late war—had vanished. The major reparations creditors looked backward with one eye threatening stern retribution and winked with the other at the potential partners—or satellites—in the new alignments in the making.

DISARMAMENT

As envisaged in Point Eight of the Atlantic Charter, the victorious nations set to work to disarm their former enemies. The Atlantic Charter had spoken of the disarmament of all nations 'which threaten, or may threaten, aggression outside of their frontiers'. By definition, however, the original members of the United Nations were presumed to be peace-loving; for how, otherwise, could Article 4 of the Charter of the United Nations refer to 'all *other* peace-loving States' or could the members of the United Nations judge whether any applicant for membership fulfilled this condition?

In any case, the records of Germany, Italy and Japan and of their little-brother aggressors in Europe had been such that little fault can be found with the implementation of this Allied war objective.¹

The initial steps to be taken in the case of Germany were outlined in the Declaration issued by the Allied Commanders on June 5, 1945, regarding the Defeat of Germany and Assumption of Supreme Authority. The Potsdam Agreement further specified the methods by which the disarmament and demilitarisation of Germany were to be achieved. The dissolution of all German armed forces and paramilitary formations, the confiscation of stocks of arms, and the dismantling programme for German industry had progressed, by 1947, to a point where Germany had ceased to be a military factor in world politics.

The United States had carried through a similar policy in Japan, and the Peace Treaties of Paris limited the armed strength of Italy and of the satellites of the European Axis to a degree which reduced each of these States to a military *quantité négligeable*. Thus, the way

¹ See below, p. 422, *et seq.*

was cleared for taking any of the measures which, in the words of the same Article 8 of the Atlantic Charter, would 'lighten for peace-loving peoples the crushing burden of armaments'.⁸

DEMOCRACY

When the Big Three attempted to give concrete shape to their verbal agreements on democracy,⁹ it became evident that more was amiss than a clash between different conceptions of democracy. The liberated countries and the enemy States were not only potential members of the 'world democratic family of nations' but also spheres of influence and security zones of the world powers against each other. In the Russian view, this dual aspect of the matter was understood on both sides.

As we are told by Mr. Byrnes (*Speaking Frankly*, 1947), during Mr. Churchill's and Mr. Eden's visit to Moscow in the autumn of 1944, Great Britain and the Soviet Union 'had reached the informal understanding that, if the British found it necessary to take military action to quell internal disorders in Greece, the Soviets would not interfere. In return, the British would recognise the right of the Soviets to take the lead in maintaining order in Rumania.' According to information received by the Department of State from the United States Embassies in Moscow and Ankara (E. Stettinius, *Roosevelt and the Russians*, 1950), Great Britain and the Soviet Union reached the original understanding, to which Mr. Byrnes refers, in the summer of 1944. Mr. Churchill and Marshal Stalin extended this agreement at the British-Soviet Conference of Moscow of October, 1944. They even defined in 'percentages the degree of influence each would have in the Balkans . . . The Soviet Union would have 75:25 or 80:20 predominance in Bulgaria, Hungary, and Rumania; Britain and Russia would share influence in Yugoslavia 50:50; and the British would have full responsibility in Greece.' To the Soviets responsibility meant control, and control could only be exercised through 'friendly' local governments. A government could only be considered to be friendly if in case of conflict it could be relied upon to stand by the power which was charged with 'responsibility' under the agreement.

In terms of power politics, the agreement meant that Bulgaria, Hungary and Rumania were to be under Soviet control, and Great Britain was free to establish a corresponding position for herself in Greece. The 50:50 agreement regarding Yugoslavia could be equally interpreted as joint control or as an adjournment of the issue pending

⁸ See below, p. 547 *et seq.*

⁹ See above, p. 324 *et seq.*

liberation of Yugoslavia by one or the other side. As long as the text of the agreement is not published, it is impossible to say with any certainty whether it was meant to apply only to the period of liberation or to lead to a more permanent division of the Balkans into two spheres of influence. Even if the agreement had only the most limited scope, it provided a basis for either side to use the intervening period between war and peace for the establishment of 'friendly' governments and for the creation of de facto situations of more than a temporary character.

The British negotiators may well lament that they had never intended to conclude an agreement on the lines of the Anglo-Russian Treaty of 1907 regarding spheres of influence in Persia. They may protest that they had thought in terms of co-operation between Allies and not of conflict between potential enemies. The Soviets may find this argument unconvincing. They may hold that contemporary and subsequent British action, if not words, amply bore out their own interpretation of the agreement.

With some justice, they can point to an apparently clear pattern of British policy towards liberated countries. As is revealed by the *Hopkins Papers* (Vol. 2, 1949), the United States Government, too, felt concerned over British policy in Belgium, Italy and Greece. Mr. Churchill appeared to show a predilection for constitutional monarchy irrespective of whether it was in accord with the popular will in these countries. Diplomatic exchanges between the two Western democracies became rather outspoken when the British Embassy in Rome let it be known during the Italian cabinet crisis of November, 1944 that the United Kingdom would not give its approval to an Italian cabinet in which Count Storza held a prominent position.

Whatever doubts might still have existed were resolved for the Soviet Union and wide sections of public opinion in the Western countries by British policy in Greece. Here matters developed exactly as had been contemplated in the Moscow understanding between Great Britain and the Soviet Union. The rights and wrongs of the subject will be disputed for a long time. Horrors were committed by ELAS (the National People's Liberation Army), but their opponents had not a much better record. EAM (the National Liberation Front) terrorised the parts of Greece under its control, but it represented at least the most active forces of resistance in Greece. In any case, what were the democratic credentials of the politicians returned from exile and of the Mountain Brigade, recruited from royalists and hastily shipped in November, 1944 from Italy, or of the Sacred Squadron? ELAS may have planned a civil war, but it was provoked into action. At a time when it could no longer be stopped,

a mass demonstration at Athens was cancelled, although it had previously been permitted by the Greek Government.

The government of M. Sophoulis, which might have brought about reconciliation, remained still-born, as Mr. Churchill insisted on M. Papandreou's withdrawal of his resignation and his continued membership of the Greek Cabinet. After a personal survey of the military situation by Field Marshal Alexander, two complete British divisions, a brigade of the Fourth Indian Division and several more battalions arrived as reinforcements of the British forces already stationed in Greece. When, on Christmas Eve, 1944, Mr. Churchill arrived in Athens in person, the situation had deteriorated to a point when he could only order an all-out British offensive against ELAS. A fortnight after the offensive began on December 27, 1944, the military power of ELAS was broken. Then the counter-revolution started, with its usual combination of repression within, and outside, the law. Elections in March, 1946, observed by a British and United States Mission, resulted in a royalist majority of 65 per cent of the votes cast.

Seen from Moscow, all this was according to plan, though clumsily enacted by amateurs in the art of producing the required expression of the popular will. It is salutary to see how this experiment in democracy struck an American observer who, as United States Assistant Military Attaché, travelled throughout Greece between November, 1944 and June, 1946.

According to Mr. McNeil (*The Greek Dilemma*, 1947):

'The British . . . would have liked to see a liberal society and Government emerge from this welter. Their first and principal concern was that the Government of Greece should always be friendly towards them; and the men who shaped British policy for Greece were by this time (November, 1944) firmly convinced that an EAM Government would not be friendly. Exactly what "friendly" meant was not clear. Probably it meant in part the re-establishment of economic concessions to British-owned public utility and other companies; but in the last analysis, and far more important, it meant a Government in Greece that would side with Great Britain in case of another war.'

These were exactly the terms in which the Soviet Union thought of her own Western neighbours. She might agree, as she did at Yalta, to the reorganisation of her Communist puppet government in Poland 'on a broader democratic basis'. She might consent to the liberalisation of Tito's partisan government, as she did, too, at the Crimea Conference. In unison with the Western powers assembled at the Potsdam Conference, she might note with satisfaction that the

'Polish Provisional Government of National Unity in accordance with the decisions of the Crumea Conference has agreed to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot in which all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates'. They all might look forward to 'recognised and democratic Governments' in Bulgaria, Finland and Rumania. Yet what mattered more to the Soviet Union was that these governments should be reliable outposts in any conflict with the West. At the Potsdam Conference, Marshal Stalin stated this view with brutal frankness and left little doubt on the manner how the Soviet Union intended to implement the Yalta Agreement on the liberated Eastern countries: 'A freely elected government in any of these countries would be anti-Soviet, and that we cannot allow' (Ph. E. Mosely, *Face to Face with Russia*, 1948).

Irrespective of promises grudgingly given to the Western States, a master plan was put into operation in all Eastern European countries, whether liberated or enemy States. Communists occupied the key positions in the cabinets, especially the ministries of war, of the interior and of justice, thus assuming the control of the army and police and obtaining a free rein for their terrorist policies. Where ministers of other parties could not be kept out of office, they were controlled by reliable Communists, nominally under their direction, but, in fact, shadow ministers. Then followed a purge of the army, the police and the judiciary, and the arming of communist workers and peasants. With the assistance of cowed bourgeois parties and hesitant Social Democrats, a thorough plan of nationalisation and of the division of big estates was carried out. 'Collaborators' and 'fascists', often including anti-communists of impeccable record, were rounded up, put into concentration camps or executed with, or without, trial. Elections were organised which were neither free nor secret. Only a nominal choice of candidates was offered, anti-communists were arbitrarily disfranchised, and fraudulent voting was practised on a large scale.

In the shadow of the Soviet occupation forces, the local Communists proceeded systematically to the gradual destruction of their opponents, eliminating first the last vestiges of the parties of the right, then the parties of the centre within their governments and, finally, those Socialists who were not prepared to become mere communist stooges. Then the time was ripe to open the campaign against any other remnants of the old order, especially the churches, the intelligentsia and survivals of the non-co-ordinated press. One-party States under communist rule with secret police, concentration camps,

an obedient judiciary, in short people's democracies, had come into existence.

In Poland, Hungary, Rumania and Bulgaria the scheme worked according to plan. In Czechoslovakia, the communists took a little longer in carrying out their time-table, but, in the end, created their people's republic according to pattern. In Yugoslavia, the prescription was applied, but produced unexpected results: a communist regime which put its own interests before loyalty to the Comintern. The heresy of Titoism made necessary additional thorough purges within the ranks of even the communist leaders in the satellite countries. The show-trials held on the Soviet model proved that these Eastern 'democracies' had fully assimilated the arts of their Russian masters. In Finland alone, nothing short of open war and occupation of the whole country could have achieved a corresponding degree of co-ordination.

The facts underlying this analysis are hardly open to challenge. Advocates of the Eastern 'variant' of democracy may, however, plead mitigating circumstances. They may hold that, considering the length of time these countries had been under near-fascist rule, purges had necessarily to be carried out by them on a large scale. They may plead, too, that, without far-reaching social changes, they could have established only nominal democracies in their countries, and that their nascent States could not afford a measure of tolerance which is only safe in a well-settled democracy. Although they have done everything in their power to destroy their own small middle classes, they may further claim that they lack the broad middle classes which are the backbone of democracy in the West, and that their own middle classes had been thoroughly anti-democratic. More relevant is the example of Greece, where the alternative to EAM chosen by Great Britain and the United States was not democracy, but the despotism of reaction. Whatever interpretation may be preferred, the result is plain. With the exception of Finland, the reality of 'democracy' in Eastern Europe and the Balkans has little in common with any variant of democracy, but looks suspiciously like authoritarianism and totalitarianism.

It remains to analyse the Allied efforts at the re-education of their chief enemies to democracy. The task was relatively easy in Italy. Fascism had never taken such a hold on the Italian people as had Nazism in Germany. The workers, especially in Northern Italy, had maintained their socialist and communist traditions. The peasants lived on a starvation level and waited for a long overdue agrarian reform or revolution. The support given by the Church, big business and finance to the Fascist regime was of a more opportunist

character than in Germany. The Badoglio government, to which as late as in March, 1944 the Soviet Union accredited a diplomatic representative, exercised such authority as it had only by the grace of Allied military government. It loyally carried out the policy of the Moscow Declaration of 1943, embodied in the Armistice Agreements with Italy, and the process of 'defascistisation'. Once Great Britain had removed her objections to the transformation of Italy into a republic, the way was free for a democracy in the Western sense.

From then onwards, the main task no longer appeared to be to guard nascent Italian democracy against Fascism, but to prevent the rise of Communism. As events proved, liberal financial help from the Anglo-Saxon Powers and the still strong hold of the Roman Catholic Church over women and, generally, over voters in the countryside, saved the day in the elections of 1946 for 'moderate' republicanism. By the time of the elections of 1948, the parties of the Right had still further consolidated their position and achieved a clear majority. Whatever may have induced the Italian electorate to its choice, the voters were free agents, and the Western powers could claim that they at least had carried out in letter and in spirit the intentions of the Moscow Declaration of 1943.

In Germany the Allies were faced with a more difficult proposition. In accordance with previous Allied declarations, the emphasis at the Crimea Conference was still on the destruction of Nazism, the elimination of the Nazi party, Nazi laws, organisations and institutions and on the removal of all Nazi influence from the cultural and economic life of the German people. These objects were reaffirmed at Potsdam. The constructive aims of the Allies were stated to consist in giving to the German people the opportunity to 'prepare for the eventual reconstruction of their life on a democratic and peaceful basis'. Then, in due course, they could again take 'their place among the free and peaceful peoples of the world'.

In view of the political apathy of the German people, stunned by their defeat and post-surrender chaos, the negative part of the Allied programme was carried out with smooth efficiency. Two Directives of the Allied Control Council (Nos. 24 and 36) of January 12 and October 12, 1946, attempted to create a common policy for all four occupation zones. In fact, however, policies in each of the zones showed considerable variations.

The French found it hardest to distinguish between Germans and Nazis. To them all Germans were Nazis. Thus, the test which, more often than not, the French authorities applied was whether a German happened to be useful to them. In this case, his Nazi record

hardly mattered. Nor, in the reverse case, did his anti-Nazi past. The United States, and to a lesser extent, the British occupation authorities applied with excessive zeal formal criteria, and both tended to cast their nets too widely. Thus, they set themselves an impossible task of 'denazification' which dragged on interminably. At the same time, they stopped short of those economic and social forces behind Nazism who had put the Nazi gangsters into the saddle and had willingly supported them while success accompanied the Third Reich, but who had skilfully avoided associating themselves too closely with any of the Nazi organisations.

In this field Soviet methods were both more cynical and effective. Their policies of nationalisation and division of the big estates dealt a death blow to the classes without whose moral—or immoral—and financial support Nazism would never have been more than a movement of declassed elements and of disgruntled intellectuals. At the same time, however, new organisations under Communist control were thrown wide open to former Nazis and German officers who, after short courses in Marxism, emerged in new shirts and uniforms as the finished products in Soviet-inspired re-education to democracy.

With disunity between the Western and Eastern occupation powers growing apace, still more simplified tests were applied. What mattered now equally in the West and East was usefulness for purposes of reconstruction of each of the two Germanies and reliability against the allies of yesterday. The German experts in V-weapons, who were eagerly exported to the laboratories of the Western and Eastern countries alike, were not screened according to the routine questionnaires with which Germany had been flooded but according to the degree of their advanced knowledge in the fields of their particular research. They are the extreme cases of policies which are no longer concerned primarily with the enmities of yesterday, but with those of the future.

In the positive task of establishing democracy in Germany, the Germans do what they have always done: they obey the powers that be. In the West, they dutifully run a federal republic on the liberal-democratic model, as advised by the Western occupation authorities. In the East, they comply with the paraphernalia of a people's democracy. In the West, they practice free capitalist economy which brings Marshal Aid and the goodwill of the United States. In the East, they learn the arts of a planned economy unless they prefer to escape across the border. Both in the West and East, they cultivate an extreme nationalism and consider each other as the unredeemed *irredenta*. The authoritarian experiment in the education of Germany to democracy is completed. In the mirror of a divided Germany the

spectre of Allied disunity grins at the victors of the Second World War. It depends on the onlooker whether he wishes to recognise in the gesture of its raised arm the V-sign, the clenched fist or the Hitler salute.

The problem of Japanese education to democracy was simplified by the fact that, in practice, this matter was left to the United States and to their formidable super-Mikado on the spot. One of the terms of the Potsdam Declaration of July 26, 1945 required from the Japanese Government the removal of 'all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established'. In the United States Directive to General MacArthur of September 6, 1945 the ultimate objective of Allied occupation policy on this point was defined as conformity of the Japanese government 'as closely as may be to principles of democratic self-government'. At the same time it was emphasised that it was not the 'responsibility of the Allied Powers to impose upon Japan any form of government not supported by the freely expressed will of the people'.

With this end in view, a variety of measures were to be taken. There was to be freedom of religious worship. It was, however, to be 'made plain to the Japanese that ultra-nationalistic and militaristic organisations and movements will not be permitted to hide behind the cloak of religion'. The Japanese people were to be encouraged to 'become familiar with the history, institutions, culture, and the accomplishment of the United States and the other democracies'. Subject to security requirements, democratic political parties, with rights of assembly and public discussion, were to be encouraged. Discriminatory laws were to be repealed. In the economic field, collective organisations on a co-operative basis and the dissolution of the large industrial and banking combines were to be promoted.

At the request of the Supreme Commander for the Allied Powers in Japan, a number of nationalist organisations were prohibited, the Japanese public services purged of those who had been more prominently associated with the former regime, and—at least on paper—the notorious Kempei Tai, the Japanese military police, was abolished.

In accordance with an Imperial Rescript of March 6, 1946, the task of revising the Japanese Constitution was taken in hand with continuous prompting by the United States occupation authorities. After having been passed by overwhelming majorities in the House of Representatives and in the House of Peers, it was put into operation in 1947 with General MacArthur's blessings. Under it, Japan emerged as a liberal constitutional monarchy. The divine

person of the Emperor was reduced to the position of a 'symbol of the State and of the unity of the people, deriving his position from the sovereign will of the people'. An extensive catalogue of rights and duties of the people fills a whole chapter of this masterpiece in mimicry.

The elections for the Diet held in 1946 still showed the hold over Japanese public opinion of the feudal and autocratic forces in Japan. The Conservatives, disguised as Liberals and Progressives, obtained a clear victory over the parties of the Left. The results were, however, hailed by General MacArthur as evidence of the soundness of Lincoln's statement that the people are wiser than their rulers. On MacArthur's instructions, the experiment was repeated a year later with a distinct swing to the moderate left. Mr. Katayama, a Christian and Socialist, was elected Prime Minister with an overwhelming majority and became head of a coalition government of a mildly pink-liberal complexion. The Prime Minister defined his policy as 'moderate and Christian'. Yet in the elections of 1949, the Conservatives, styling themselves now the Democratic Liberal Party, obtained an absolute majority. The moderate parties had collapsed, and the Communists increased their seats from 4 to 35.

An equally significant pointer to the underlying trends was the announcement by the United States Government in December, 1948 that, in the interest of Japanese economic recovery, the programme for the dissolution of the big Japanese combines had been terminated. General MacArthur called this policy a 'temporary surrender of some of the privileges and immunities inherent in a free society'. It had been pressed upon him by a combination of factors and circumstances: business circles in the United States; the need to make Japan economically self-supporting; growing disillusionment in the United States with China, and American anxiety to transform Japan into a bulwark against Communism. Already in May, 1947, Mr. Dean Acheson, then Under-Secretary of State, had put the emphasis on the 'reconstruction of those two great workshops of Europe and Asia—Germany and Japan, upon which the ultimate recovery of the two continents so largely depends'. Yet it is only fair also to draw attention to two more successful aspects of United States policy towards the democratisation of Japan: land reform and education. Here promising foundations have been laid for developments on democratic lines. The political climate, however, in present-day Japan is unfavourable to the growth of these rather tender plants.

Only time can tell whether the adaptation of Italy, of Western and Eastern Germany, and of Japan to the forms of government

agreeable to their respective protectors is more than a not uncommon form of political mimicry or, as this is more bluntly called on the colonial frontiers of civilisation, indirect rule. The person of the Emperor of Japan, revealed to have known in advance of the decision to occupy Manchuria and of the impending war of aggression against the Western democracies,¹⁰ and later the obedient instrument of General MacArthur, symbolises appropriately the twilight position of these conscripts into the 'world family of democratic nations'.

RELIEF AND REHABILITATION

The brightest page in the story of the realisation of Allied war aims in, and after, the Second World War is that of the Allied relief and rehabilitation work in the liberated countries.

In August, 1940, at a time when the British Prime Minister would have had every justification for concentrating on more immediate issues, Mr. Churchill warned the House of Commons of Britain's duties in the hour of victory and of the need for planning ahead to supply food and other urgent necessities without delay to the areas cleared of German domination. In the following year, the British Government convened a meeting of the Allied Governments. It was agreed to establish an inter-Allied Post-War Requirements Committee which was to frame the necessary estimates of the shipping requirements and economic needs of the countries concerned. At the end of 1941, the British Government established the Middle Eastern Relief and Refugee Administration with its seat at Cairo to care in the first place for Polish and Greek refugees. President Roosevelt initiated similar far-sighted action in the United States and established, in the Department of State, the Office of Foreign Relief and Rehabilitation Operations.

The Allies soon realised that much more was required to fight the devastation in depth wrought by the totalitarian aggressors in Europe and the Far East and to counteract the dangers from large-scale starvation and epidemics which were to be expected by the end of the war. The United States became the prime mover in this field. On November 9, 1943, representatives of the 44 United and Associated Nations signed the Agreement for the United Nations Relief and Rehabilitation Administration (UNRRA).

In principle, the functions of this temporary international organisation were limited to the population of liberated areas. They were to receive 'aid and relief from their sufferings, food, clothing and shelter, aid in the prevention of pestilence and in the recovery of the health of the people'. Furthermore, preparations were to be made

¹⁰ See above, p. 344 *et seq.*

for the return of prisoners and exiles to their homes and for assistance to the liberated countries in the resumption of urgently needed agricultural and industrial production and the restoration of essential services. UNRRA was to be a halfway house between an international charitable institution and a full-dress international reconstruction agency. As formulated by Governor Lehman, the first Director-General of UNRRA, in his Address on November 11, 1943, the guiding principle of UNRRA was to help people to help themselves.

The organisation of UNRRA was based on the principle of separation of powers. The Council, consisting of all the members, was to determine policy. The special position of the world powers was recognised by the establishment of a Central Committee of the Council, consisting of representatives of China, the Soviet Union, the United Kingdom and of the United States. Between sessions of the Council, which was to meet at least twice a year, the Central Committee was authorised to take emergency decisions. The executive authority was entrusted to the Director-General, whose appointment was to be made by the Council on the nomination by unanimous vote of the Central Committee. By 1946, the staff of UNRRA numbered nearly 12,000 and was at work in 41 different countries from Europe to the Far East.

At the first meeting of the Council at Atlantic City in November, 1943, it was decided that each member should contribute for the year ending June 30, 1943, 1 per cent of its net national income. A second contribution of the same size was decided upon in 1945. Countries whose territories were under enemy occupation were under no obligation to contribute to the operational, as distinct from the administrative, expenses of UNRRA. This meant that the heaviest burden fell on the United States and on the United Kingdom. In the end, these two countries financed 73 and 17 per cent respectively of all of UNRRA's obligations.

Members which had not sufficient foreign exchange were to receive supplies and services free of charge. UNRRA was to operate in any country only with the consent of its government or the military command responsible for the area. Bearing in mind the political uses to which, after the First World War, Hoover's American Relief Organisation was put in Central Europe, another Resolution of the First Session of the Council at Atlantic City of 1943 expressly provided that assistance should be given according to need and without discrimination by race, religion or political opinion.

The chief Allied recipients of aid in Europe were Czechoslovakia, Greece, Poland, the Soviet Union (Byelorussia and the Ukraine),

and Yugoslavia. Owing to the civil war in China, UNRRA was faced there with special difficulties. China received the largest allocations made to any single country. By special resolutions, a limited and, subsequently, a full programme of assistance was authorised for Italy and Austria. More limited emergency programmes were adopted for Finland and Hungary. UNRRA activities in Germany were restricted to caring for displaced persons.

A few figures must suffice to give an idea of the magnitude of the task accomplished by UNRRA. It delivered 25 million tons to the value of 3 milliard dollars to 17 different countries. 1 milliard dollars of UNRRA's resources were used for the rehabilitation of the economies of the receiving countries. 160 million dollars were spent on medical supplies and life-saving drugs. UNRRA assisted in the repatriation of 7 million displaced persons. These figures are taken from the Report of UNRRA's Director-General on the occasion of the closing of all UNRRA missions in Europe in 1947. In this Report, Mr. Rooks justly summed up the achievement of UNRRA: 'UNRRA has not won the fight—as a short-term organisation it was hardly expected to solve the entire problem—but it has held the line. Hunger and malnutrition have not been eradicated, but starvation has been staved off. Economic recovery has not been achieved, but collapse has certainly so far been avoided.'

Like any human effort, UNRRA was far from being perfect. The stories about waste and mismanagement by UNRRA are legion and, in part, even true. Yet the fact remains that the Western democracies have done their maximum to alleviate the misery brought by the totalitarian aggressors on their victims, and that they have even included some of their former enemies in this programme of mercy. They continued this work even at a time when the Soviet Union and the countries of Eastern Europe requited such assistance only by campaigns of hate and derision. By 1947, the patience of the United States was exhausted, and UNRRA's work in Europe came to an end. The Truman Doctrine and the Marshall Plan had become more apposite to the world situation as it had then shaped.¹¹ Yet, while drifting ever further apart, the peace-makers had still failed to settle a formidable agenda of problems unsolved.

¹¹ See below, pp. 414, 519 and 601 *et seq.*

CHAPTER 23

THE PROBLEM OF GERMANY

'History shows that Hitlers come and go but the German people and the German State remain' Stalin's Order of the Day, February 23, 1942

GERMANY heads the long list of problems left unsolved by the peace-makers of 1945. It may even be argued that Germany is *the* problem on which all other issues of post-war reconstruction hinge. In order to see the German problem in its true perspective, it is necessary first to dispose of the deceptive legends which have grown around this issue.

LEGENDS ON GERMANY

German intellectuals and propagandists have contributed their fair share to the legends on Germany. They revel in the personification of Germany by Siegfried, the pale image of the ancient Teutonic god of the sun. This national hero has particular attributes. He is endowed with offensive and defensive miracle weapons. His sword is irresistible and his skin, hardened by the dragon's blood, is impenetrable, or nearly so. How much alive this legend is, may be judged by the almost childlike faith with which Germans—Nazis and Anti-Nazis—believed right to the end of the Second World War in a last-minute change in the fortunes of war, to be brought about by one of Hitler's secret weapons. German official propaganda made skilful use of this credulity of the German people. Yet all that emerged on the German side was the V-weapon in its various forms. The miracle weapon came true, but not in Siegfried's hand.

Another part of the Siegfried legend, too, has its significance. Siegfried's natural armour had one small chink. Treacherous Hagen learned of this well-kept secret by pretending to Krimhilde to be Siegfried's friend. Abusing a wife's anxiety and confidence, he slew Siegfried from behind. As the spot happened to be on Siegfried's back, Hagen might have found it technically difficult to approach Siegfried in any other way. Ludendorff's invention of the stab in the back of the German army in 1918 by the 'revolutionary' forces in Germany resuscitated this legend to save the tarnished reputation of the vanquished German army and of its officers' corps.

It is one of the ironies of history that the formulation of this stab-in-the-back legend, due to a specific occasion, and to Ludendorff by

a British General, Sir Neill Malcolm, in the course of a dinner conversation (L. Fraser, *Germany between Two Wars*, 1944). Today, the same legend is in vogue in Germany, but with a slight nuance. Hagen is resurrected in Hitler's demoniac intuitions. They have lulled Germany's shining armour from defeat to defeat on the battlefields of Eastern and Western Europe, while the German General Staff takes full credit for Germany's victories in the initial stages of the Second World War.

The last part of the Siegfried trilogy, kept alive in German memory both through school teaching and Wagner's operas, is perhaps still more relevant to the study of this phenomenon of group psychiatry. In the end, Krimhilde gets her revenge on Hagen and her own brothers. Krimhilde herself, her enemies, her unsuspecting husband and his people—only Huns—all are destroyed on the gigantic funeral pile erected in Siegfried's honour. If Siegfried cannot win his world wars, then the whole world must perish in the smoke and thunder of a *Götterdämmerung*.

If such an attitude should strike any sane person as madness, he is hardly to be blamed. Yet legends on Germany are not a German monopoly.

Inside and outside Germany, the distinction is frequently made between a good and bad Germany. The one, the Germany of Schiller and Goethe, of Beethoven and Bach, of Kant and von Humboldt, forms a cherished part of a common European tradition. The other, the Germany of Frederick II of Prussia and Bismarck, of Nietzsche and Wagner, of Treitschke and Hitler, is its sinister and demoniac antithesis.

By being limited to Germany, this legend escapes being labelled for what it is: a platitude. There is a Faust and Mephistopheles, a Jekyll and Hyde, in every human soul. Every nation has its good and bad, its constructive and destructive, its civilised and barbarian elements. France, Great Britain, the United States and the Soviet Union have their 'other' side. Whoever praises, or takes collective pride in, the 'other' Germany, should accept the logic of his own argument: blame, and collective guilt, for the German wars of aggression of 1870, 1914 and 1939, and for the horrors of Auschwitz, Belsen and Ravensbrück. As an individual, any German is as much, or as little, responsible for the one as for the other.

The advocates of the 'other' Germany of the 'poets and thinkers' should bear in mind the words of one of their victims:

'I do not affirm that the Germans are a bad people, or that all Germans are bad. I affirm only that Germany, as a people and State, is completely responsible for the most terrible war in world

history, . . . that the Germans as a nation and State are responsible for Hitler and Himmeler, just as the Americans are responsible for Lincoln or Roosevelt, the British for Churchill, the Italians for Mussolini, the Czechoslovaks for Masaryk and the Russians for Lenin and Stalin' (President Benes, November 10, 1941).

The only mitigating circumstance that can be pleaded for this legend is that it stimulates thought on real problems of international relations: Does international society, as it exists at present, tend to bring out the best or worst in nations? Is it possible to transform international relations in such a way as to encourage what we think is best in any nation? Can we agree on what is the best?

Finally, there are the typical wartime legends, quickly manufactured and equally speedily discarded. Lord Vansittart's German 'butcher-bird' is one of the high-lights of this type of ad hoc reading of history. It finds its parallels in corresponding German legends on their enemies, whoever, at any particular time, they may be. It would be insulting to his lordship's intelligence, and unduly flattering to the lesser scribes in his wake, to attempt to discuss their distortions of history seriously.

THE GERMAN PROBLEM

To make light of the legends on Germany is not to deny the existence of a German problem.

Mr. Churchill's frequent references to this puzzle provide an ideal starting-point for any inquiry into this question; for he has had to grapple, throughout a lifetime, with this thorny issue. At the same time, however, he has tried hard to maintain some of the detachment of a true historian to his subject.

In *The World Crisis 1911-1918* (1939) Mr. Churchill spoke of pre-1914 Germany as of the 'foolish-diligent Germans, working so hard, thinking so deeply, marching and counter-marching on the parade grounds of the Fatherland, poring over long calculations, fuming in new-found prosperity, discontented amid the splendour of mundane success'. When, in November, 1932, Mr. Churchill warned the House of Commons against the folly of making any further concessions to a Germany which, in fact, was already fully under the control of the military, he still felt 'respect and admiration for the Germans'. A few months later, in March, 1933, he wondered with many others over the 'tumultuous resurgence of ferocity and war spirit . . . in one of the most gifted, learned, scientific and formidable nations in the world'. His undertone of sympathy, coupled with his repeated warnings against the barbarian leaders of the movement, is clearly apparent in his later works. In *A Cassandra*

speeches that were to accompany the appeasement policy of the Western democracies towards Germany.

While Britain was fighting her lonely struggle in 1940 and 1941, Mr. Churchill dispensed with subtle distinctions, and Germans had to be content with being described as 'barbarous Huns'. The nearer, however, the hour of victory came, the more Britain's war leader distinguished again between the German people and its guilty rulers, the representatives of 'Nazi tyranny and Prussian militarism' (House of Commons, September 21, 1943).

Once the chief foe of the United Nations lay prostrate before its victors, Mr. Churchill was one of the first who called for help to 'those misguided and now terribly smitten people' (October 23, 1945). In his speeches at Brussels in the following November, he pondered again over 'that people, always so docile in the face of a tyrant'. Yet, at the same time, he reminded his audiences of the fact that :

'Twice the German people, by a majority, voted against Hitler but the Allies and the League of Nations acted with such feebleness and lack of clairvoyance that each of Hitler's encroachments became a triumph for him over all moderate and restraining forces If the Allies had resisted Hitler strongly in his early stages, even up to his seizure of the Rhineland in 1936, he would have been forced to recoil, and a chance would have been given to the sane elements in German life, which were very powerful especially in the High Command, to free Germany of the maniacal Government and system into the grip of which she was falling.'

During the war, Mr. Churchill had left it an open question whether an indictment against an entire people could be framed. In the House of Commons' Debate of June 5, 1946, however, he fell back on Burke's dictum and denied that a new Europe could be built if it were to contain 'pariah nations, that is to say, nations permanently or for prolonged periods outcast from the human family. . . . Let Germany live.'

At Zürich University (September 19, 1946), Mr. Churchill re-emphasised the need for the punishment of German war crimes and for the disarmament of Germany: 'But when all this has been done, as it will be done, as it is being done, there must be an end to retribution. There must be what Mr. Gladstone many years ago called a blessed act of oblivion.'

In the debate on the Address (November 12, 1946) Mr. Churchill came back to the subject of the 'seventy or eighty millions of men and women of an ancient, capable and terribly efficient race . . . in a ruined and famished condition in the heart of Europe'. With the wonted foresight of the true statesman, he warned against an

indefinite prolongation of denazification and its extension to the small fry of Nazi followers :

'After all, in a country which is handled as Germany was, the ordinary people have very little choice about what to do. I think some consideration should always be given to ordinary people. Everyone is not a Pastor Niemöller or a martyr, and when ordinary people are hurled this way and that, when the cruel hands of tyrants are laid upon them and vile systems of regimentation are imposed and enforced by espionage and other forms of cruelty, there are great numbers of people who will succumb. I thank God that in this island home of ours, we have never been put to the test which many of the peoples of Europe have had to undergo.'

What, then, is the essence of the German problem ? It has many aspects. Yet, for the student of international relations the most disturbing features are the contemporary German record in aggressive warfare, and the German craving for the strong State.

In order to avoid any overstatement, it is well to recall that, in a system of power politics, war is but the outward symptom of international friction and the most extreme form of international tactics.¹ It is not an invention on which the German people can claim patent rights. It may also be appropriate to remember that the history of every nation has its dark chapters. It would not be difficult to write a history of any one of them *à la* Vansittart in terms of bad neighbour policy, aggression and war.

The most civilised nations would be shocked to read the story of the colonial frontier as seen through the eyes of their particular Mohican. Less than one and a half centuries ago, a British contemporary of the Napoleonic Wars contemplated the possibility of a French conquest of the British Isles in the following words: 'The next generation, if not the present, would be all frenchified, and debased, even below the vile standard of our oppressors. Yes, Englishmen! Your children would become in morals, as well as in allegiance, Frenchmen! I can say to you nothing worse' (J. Stephen, *The Dangers of the Country*, 1807).

Similarly, the tendency towards authoritarianism is not an exclusive German prerogative. England had its period of the Stuarts and of Cromwell. The Star Chamber and *lettres de cachet*, the Tower and the Bastille, were not 'made in Germany'. The prototype of modern Fascism grew south, and not north, of the Alps.

Aggressiveness and authoritarianism are not the specific characteristics of any one nation. They are possible ways in which, in a particular historical situation, some nations react to the challenge of their environment. What is important is whether, in fact, they had

any alternative to the course which they have actually taken, and what such alternatives would have implied.

In the case of Germany, the basic fact is the open expanse of the North European plain from the Low Countries to the heart of Russia. In this space, Germanic and West Slav tribes, for centuries, have pushed each other backwards and forwards. Even the rivers which run through this plain did not form any natural barrier. As population increased, the huge forests were depleted, and the whole of this fertile area belonged to whoever was strong enough to hold or conquer it. In the course of the Middle Ages, the Germanic element, backed by the military power of Rhenish *Urdeutschland*, achieved a growing ascendancy over its Slav rivals. Yet, whenever German State power declined, the issue would be re-opened. The inhabitants of the German plain could not fail to learn the simple lesson of history. Their choice was between being objects or masters of their own fate, between anarchy and the strong State.

In periods of similar strain, other nations have found in the might of the State the only alternative to political and social chaos. Beneath Machiavelli's air of cynical detachment was a deep yearning for the strong liberator who would free Italy from foreign domination. Hobbes conceived his sovereign in terms which would protect the commonwealth both from invasion and civil war. Yet, for a long time to come, the Channel and the British Navy would suffice to guard Great Britain against invasion. This double shield would make her people the 'incredulous, indifferent children of centuries of security' (Mr. Churchill in the House of Commons, May 22, 1935).

As long as Germany and Italy were merely geographic terms, they were the ignored objects of the policies of foreign powers and the classic battlefields of Europe. When they became a menace to their neighbours, Germany, in her exceptionally favourable position in Central Europe, could even think in terms of being the natural master of the Continent. Thus, the geographic situation of Germany is the basic clue to the German problem. It is not, however, the whole of the story.

The German environment and its lessons have left their lasting imprint on the German national character. The greatest scepticism may be appropriate regarding this conception. Nevertheless, it is impossible to overlook the striking differences which do exist between Germans and their neighbours. From the point of view of international relations, the most relevant features of the German national character are the obedience and political apathy of the German people and its uncritical adoration of outward success.

Madame de Staël aptly called this attitude vigorous submissive-

ness. Acceptance of the inevitable is a common human characteristic. In some situations it may be the quintessence of wisdom. The Vicar of Bray would have concurred with such worldly prudence. Yet the German reaction to their conquerors from within and without goes beyond the normal behaviour of conquered—and, especially, peasant—peoples who know instinctively that conquerors come and go, but that they, the people, will always remain. It is a positive acclamation of such regimes, and it springs from two different sources.

The impotent individual can more easily retain his self-respect if he convinces himself that he does what he has to do, not because he must, but because he approves of it. Furthermore, a strong new regime has at least in its favour, if only temporarily, all the attractiveness of apparent success. It is not surprising that, against such a background, Hegel could propound, with ostensible success among his compatriots, his philosophy of the reasonableness of what is on the ground that it is. It is perhaps symbolic that the majority of the first Parliament of Western Germany is composed of parties whose predecessors—in a good many cases the same deputies—voted to Hitler all the emergency powers which enabled him to transform, apparently legally, the Republic of Weimar into the Third Reich.

Political apathy in deed, if not in word, is the necessary concomitant of such submissiveness. It is for the rulers, whoever they may be, to decide. The task of the subject is to carry out whatever orders he receives. Nothing could have shown more drastically this national characteristic than the history of the rise and fall of the Weimar Republic.

In 1918, Social Democrats and trade union leaders were the only remaining centres of authority in Germany. As good subaltern officers, they did not know what to do with their power. Instead of carrying out an overdue social revolution or of attempting at least to occupy the key positions in the new Republic, they entrusted themselves to the keeping of the Imperial civil service and of an army hastily recreated by the former officers' corps. In the years that followed, these involuntary revolutionaries had to learn from bitter experience the difference between holding office and exercising power. None of them demonstrated this more clearly than Severing, the Social Democrats' 'strong' man in Prussia.

When, in 1932, von Papen staged his *coup d'Etat*, he asked Severing to hand over the Prussian Ministry of the Interior. Severing firmly replied that he would give way to force alone. Papen knew his man. Contemptuously, he sent an officer and a few men. Severing, surrounded by reliable Republican police, withdrew, mak-

ing what he thought a dignified exit. Rather than face bloodshed, he handed over the citadel of Republican strength to the enemies of the Republic. It was then that the Weimar Republic was destroyed. What happened after was only the consummation of this unmanly act of surrender. The only action which these guardians of the Republic took was equally typical. They initiated legal proceedings before the *Staatsgerichtshof* at Leipzig.

Dr. Brüning's resignation a few months earlier from the German Chancellorship is another illustration of the spirit in which these democratic dignitaries exercised their duties of State. In spite of having a working majority behind him and, without any constitutional obligation, the Chancellor of the *Reich* resigned when asked to do so by von Hindenburg. The Chancellor, who had been an officer during the First World War and had remained rather conscious of this fact, could not bring himself to stand up to his former Field-Marshal. Without his confidence, it was not worth holding high governmental office. To fight a President who was forgetting his place was unthinkable. The natural thing to do was to make way for men who had the President's confidence. Whether they had that of Parliament, or were likely to defend the Republic against its enemies from within, were minor matters.

Once the Nazi system was in power and, assisted by the indecision and appeasement policies of the Western democracies, was able to consolidate its hold over Germany, not much could be expected from any democratic opposition in Germany. It is, however, symptomatic that the embryonic resistance movements which existed in the Third *Reich* did not spring from the democratic German parties.

One of them was primarily recruited from members of the former aristocratic ruling class. Before 1939, their emissaries had repeatedly warned the Western powers, especially the Chamberlain government, of the dangers of a weak policy towards the Third *Reich*. In their ill-fated attempt at Hitler's life in 1944, they made a last desperate effort to regain the reins of power before all was lost. The other was the Communist underground. It was completely unrepresentative of the German working class and riddled with *Gestapo* agents.

On the morrow of the Munich Settlement and as long as Germany appeared likely to win the war, Hitler could justly say of himself: 'I am not the head of the State in the sense of being either dictator or monarch. I am the leader of the German people. I could have given myself quite different titles. I have kept my old title and I will keep it so long as I live, because I do not wish to be anything else and never think of becoming anything else. The old title suits me. . . . I can say that I represent the whole German people.'

The better type of German then saw only one way open to him : to keep away from politics and to choose his own particular form of escapism. The worse types—and, in every mass society, they form the majority—associated themselves with the Nazi regime just as, before, their fathers had co-ordinated themselves with every previous system that spelled success and reward.

In part, opportunism of this kind is attributable to lack of standards by which success can be judged. Perhaps there is some truth in the thesis that one of the differences in the reactions of West Europeans and Germans is due to the fact that Germany east of the Rhine never benefited from the civilising influence of Rome, and that Christianity did not exercise there so profound an influence as west of the Roman *limes*. It appears, however, to be more probable that the so exceptionally widespread adulation of success in Germany is due to less remote factors.

The strong State, whether absolutist, militarist or totalitarian, tends to destroy individuality and to foster collectivity. It reduces the individual to a particle in the mass, and the mass follows its leaders, especially as long as they are successful and give them *panem et circenses*. Furthermore, standards of group behaviour spread from above to the lower strata of society. In Germany, the middle classes took their cue from the feudal aristocracy. The German working class—like the working classes in any capitalist country—never aspired higher than being received into the middle classes, and being allowed to take a dignified place in the appointed order.

Thus, there is substance in the view that some of the roots of Nazism and German militarism lie deep in German history. Frederick II of Prussia and Hitler form links in the same chain. German, as well as foreign contemporaries of Frederick II were equally shocked at the rape of Silesia by the author of the *Anti-Machiavel*. Yet they could not help noticing that, in the end, the Prussian soldier-king was successful, that Great Britain had liberally granted subsidies to him as her cherished Continental sword, that the young Russian Czar saw in Frederick his idol, and that the old man of *Sans-souci* had transformed Prussia into a first-rate European power.

The humiliations and sufferings of Germany during the Napoleonic Wars drove home the same lesson in reverse. Matters only changed when, by force of arms, France was confined within her frontiers of 1792. It was not always made very clear to subsequent generations of German schoolchildren whose arms had brought about this result. The contribution made by British sea power was largely ignored and, to a somewhat exaggerated extent, the emphasis

was put on the revival of Prussian military power and the German 'people in arms' (H. von Treitschke, *Deutsche Geschichte in neunzehnten Jahrhundert*, vol. 1, 1879).

When, during the middle of the nineteenth century, Liberalism failed to fulfil the hopes of German nationalism, it was Liberalism that became discredited. The Revolution of 1848 exhausted itself in noble rhetorics and its more extreme exponents did not cover themselves with glory in their symbolic acts of armed resistance against the professional troops of their absolutist adversaries. It was left to a member of the Prussian aristocracy to show the middle classes how at least one of their ideals could be realised. Bismarck created the German *Reich* on the battlefields of Koniggratz and Sedan. The majority of the former Liberals rallied around the man of deeds. The German army and the imperial bureaucracy came to be the foundation stones of the new Empire. Seeing only the means by which Bismarck had achieved his astounding success, but lacking the natural self-restraint of a born aristocrat, the German *bourgeoisie* gloried in despising its liberal past, made common cause with the landed gentry, made power and wealth their *raison d'être* and, aping the aristocracy, indulged in vulgar militarism and nationalism. William II, the knight in shining armour crowned with an eagle's helmet, was their congenial symbol.

In the political and social structure of the German *Reich* there was little room for independent working class and trade union movements. Of necessity, they were driven into an opposition which was exacerbated by Bismarck's anti-Socialist campaign. Yet when, in 1914, the Social Democrats had an opportunity to prove that 'Germany's poorest son was also her most faithful' (August Bebel), they speedily forgot their pre-war grievances and tirades against German nationalism and militarism. In 1918 they showed that Germany's poorest son was also the most helpless and trusting of her offspring.

Anyone who, on May Day, 1933, watched the eagerness with which German co-ordinated trade unions marched in long columns behind the Nazi flags and bands knew that, in spite of fourteen years of the Weimar Republic, nothing had basically changed. The German masses once more followed the star of success. Every one of Hitler's weekend surprises and successes rallied new followers to his camp from the middle and working classes. Until, in 1939, the Western powers put a stop to their series of retreats before Hitler, their own reactions appeared to justify every time the Nazi policy of bluff.

All the concessions which had been denied to the Weimar

Republic, and more than Republican politicians of even the Right would ever have dreamt of asking, were offered to the Nazis on a silver salver. The German people was again taught the lesson that good boys were expected to behave themselves, and that bad boys got most of what they wanted. At the end of the Second World War, however, the German people was very far from remembering that, at least occasionally, bad boys have to pay the penalties of their evil deeds. When the conquerors entered German soil, they found to their astonishment that the German people expected to be treated as one of the many victims of Nazi tyranny.

Partly, this was sheer play-acting, but, partly, it was subjectively honest. A good many Germans only remembered that they had been anti-Nazis while the Nazi Party had still been an insignificant minority, that they had done a good deed to somebody who had suffered from the Third *Reich*, and that they, too, had undergone the privations of war. Retrospectively, the war had become Hitler's exclusive responsibility. Allied air bombardments and the losses of the German armies and civilian population now appeared as items in a joint account of the Allies and of the German people which was to be settled with the real culprits. When the Allies failed to respond to these overtures, the 'liberated' people began to wonder again whether, after all, Hitler and Göbbels had not been right in their prophecies.

None of these national characteristics is exclusively German. In no modern mass society can the individual help co-ordinating himself to a considerable extent. The people's democracies from Prague to Peking show the extent to which ruthless totalitarian systems can stultify the national will. Political apathy, too, is a failing of large sections in the Western democracies, especially in the United States, and material success is a virtue in any capitalist economy.

Yet, somehow, there is a difference in the reactions of Germans and other nations to similar challenges. Everything Germans do, they appear to do more thoroughly and more systematically than anyone else. This is both a failing and a blessing in disguise. In a world organised as a society, Germany reflects in the extreme the forms of typical competitive behaviour. If there is to be power politics, let it be power politics with all its implications and consequences. If there is to be capitalist competition, then let us dispense with old womanish sentimentality and Christian Sunday school preaching. Anything you can do, we can do better. Thus, the world must dislike the Germans; for it sees, as in a distorting mirror, its own image and does not like it.

At least potentially, this diagnosis has a more cheerful side.

Whenever the world should make up its mind to organise itself on a community basis and should be strong enough to impress the German people with the fact that this will be done, the German people would strive equally hard to make a success of this task. Then, they would do their best to outdo the apostles of world peace and world order. In such an eventuality, perhaps, Germans will be more popular; for then a shining mirror will reflect a more pleasing and civilised world than we have seen so far. Under such happy auguries, their collective obedience may be turned to more constructive purposes, their political apathy may vanish and their opportunism be transformed into an open-mindedness without which no new world can be built.

Such a picture is not mere day-dreaming. Perhaps nowhere, with the exception of Great Britain, were Wilson's Fourteen Points and the idea of a League of Nations received with so much enthusiasm as by the democratic sections of post-1918 Germany. In 1945, a similar willingness was noticeable to accept any constructive lead that the United Nations might have cared to give. Yet these rare moments of opportunity have passed. If anyone could have thought of devising a German problem, he could not have done better than the Allies of the Second World War.

ALLIED PLANS AND EXPERIMENTS

The Allies in the Second World War certainly did not fail for want of schemes and experiments in solving the German problem. They contemplated and tried any number of more or less drastic remedies. They thought of dismembering and pastoralising the culprit. They practised the arts of decentralisation, truncation and of international control. They concluded between themselves any number of pacts of mutual assistance against future German aggression.

During the war, political intelligence departments of the United Nations, and especially of the Allied governments-in-exile, busied themselves with drafting detailed and copious memoranda on the treatment of post-war Germany. There was only one snag about all this post-war planning. Most of these memoranda—many still labelled top secret—failed to percolate to the higher regions in which the actual decisions were taken by the Big Three. Even if they had not been impatient men, they had more pressing claims upon their time than to digest material of this kind. The chief war leaders knew, too, that much would depend on who would enter Germany first. For opposite reasons, both the Western leaders and Marshal Stalin held their hands. They also feared that any premature attempt at a solution of the German problem might jeopardise continuously strained

Allied unity. Thus, the inevitable happened. Snap decisions were taken whenever matters could no longer be adjourned.

The Quebec Conference between Roosevelt and Mr. Churchill in September, 1944 proved what might happen in such an atmosphere of improvisation and haste. In the West, Allied troops successfully continued their drive into France and Belgium. On September 10, the day of Mr. Churchill's arrival in Quebec, United States forces entered Luxemburg and stood within fourteen miles of Aachen. Soviet operations in Bulgaria had been completed. The Finnish Armistice was signed. The military advisers at the Conference expected German surrender in a matter of weeks, if not days. It then became painfully obvious that the Big Three had no common plan for Germany. Marshal Stalin was far away and, snatching a few moments from their other tasks, President Roosevelt and Mr. Churchill provisionally agreed on one of the most fantastic documents which the war was to produce: the Morgenthau Plan. After the Conference, President Roosevelt confessed to Mr. Stimson that 'he had no idea how he could have initialled this; that he had evidently done it without much thought' (H. L. Stimson, *On Active Service in Peace and War*, 1949).

Each of the Allied patterns for Germany requires separate analysis.

Dismemberment. The dismemberment of Germany had been in the air since 1943 when Hopkins, M. Litvinov, Mr. Eden and M. Maisky, first informally discussed this possibility. At Teheran, President Roosevelt and Mr. Churchill mooted two different plans for the division of Germany. President Roosevelt played with the idea of dividing Germany into five autonomous States, with the Ruhr, the Saar, Hamburg and the Kiel Canal under international control. Mr. Churchill favoured the separation of Prussia from the rest of Germany and the incorporation of the Southern German States into a Danubian Confederation. Marshal Stalin was sceptical regarding both schemes, but, in case of doubt, preferred President Roosevelt's scheme. The discussion remained inconclusive, and the subject was referred for further study to the European Advisory Commission.

At Yalta, under the heading of dismemberment of Germany, it was merely resolved that the Big Three should possess 'supreme authority with respect to Germany' and in the exercise of such authority should take such steps, 'including the complete disarmament, demilitarisation and the dismemberment of Germany', as they might deem necessary for future peace and security. (Cmd. 7088—1947). In *Roosevelt and the Russians* (1950), Mr. Stettinius revealed that this cautious formulation of the subject was due to Mr. Eden's

reluctance to be committed to a policy of dismemberment before the question had been thoroughly studied.

Decentralisation. Side by side with plans for the complete dismemberment of Germany, the Allies considered the possibility of less drastic measures which, in the end, would equally effectively lead to the elimination of Germany as a greater power.

On the political plane, this was to be achieved by a policy of decentralisation. In the absence of inter-Allied agreement on dismemberment, the United States Joint Chiefs of Staff instructed General Eisenhower to work on the assumption that Allied administration of Germany should be 'directed towards the decentralisation of the political and administrative structure and the development of local responsibility'. The possibility of subsequent authorisation by the Control Council of limited centralised administrations was left open (Directive of April 28, 1945). At the Potsdam Conference, the Big Three adopted the substance of this Directive (Cmd. 7087—1947).

They further authorised the restoration of local self-government and the establishment of essential central German administrative departments under the direction of the Control Council. On the subject of a central German Government, the Conference decided that, 'for the time being', no central German government should be established.

As a matter of fact, within each of the occupation zones, the trend towards centralisation quickly re-asserted itself against hesitations on the part of the occupying Powers and against German tendencies towards particularism, especially in Bavaria. Within each of the zones, the *Länder* co-operated with each other as much as their respective occupation authorities permitted such political co-ordination. The economic fusion of the British and United States zones in September, 1946 led to the creation of complex bizonal German agencies and, in 1947, to the establishment of a bizonal Economic Council.

The Constitutions for Western and Eastern Germany of 1949 completed the process of re-unification in each of the two Germanies. Western Germany has again become a federation with wide federal competences and a strongly entrenched federal Chancellor. In Eastern Germany, the centralised organisations of the Communist-controlled Socialist Unity Party and of the secret police have carried the process of re-unification still further.

Only one remnant of the past had vanished completely: the Prussian State. Hitler, with an eye on simmering royalist traditions and the republican record of Prussia, had parcelled up Prussia into overlapping defence and economic regions. The four occupation

zones cut right across the old borders of Prussia. This alone made necessary the creation of new *Länder* in the former territory of Prussia. Thus, the Law of February 27, 1947, by which the Control Council solemnly dissolved Prussia, was no more than a rather belated death certificate.

Economic decentralisation was the pale remnant of earlier and more radical plans for the de-industrialisation and pastoralisation of Germany.

Mr. Morgenthau, Jr., the United States Secretary of the Treasury, was the prime advocate of the de-industrialisation of the Ruhr-Saar area and of the transformation of Germany into a primarily agricultural country. In spite of opposition inside the President's Cabinet against the more extreme features of the Morgenthau Plan, the scheme had a short-lived success. In circumstances already described,² the Plan was approved at Quebec on September 16, 1944 by Roosevelt and Mr. Churchill in this form :

'At a conference between the President and the Prime Minister upon the best measures to prevent renewed rearmament by Germany, it was felt that an essential feature was the future disposition of the Ruhr and the Saar.

'The ease with which the metallurgical, chemical, and electric industries in Germany can be converted from peace to war has already been impressed upon us by bitter experience. It must also be remembered that the Germans have devastated a large portion of the industries of Russia and of other neighbouring Allies, and it is only in accordance with justice that these injured countries should be entitled to remove the machinery they require in order to repair the losses they have suffered. The industries referred to in the Ruhr and in the Saar would therefore be necessarily put out of action and closed down. It was felt that the two districts should be put under some body under the world organisation which would supervise the dismantling of these industries and make sure that they were not started up again by some subterfuge.

'This programme for eliminating the war-making industries in the Ruhr and in the Saar is looking forward to converting Germany into a country primarily agricultural and pastoral in its character.

'The Prime Minister and the President were in agreement upon this programme.'

The Morgenthau Plan would certainly have solved effectively the problem of any future German aggression. The wholesale dismantling of German industry would also have been a possible method of dealing with the question of reparations from Germany. It was, however, completely unworkable unless coupled with a large-scale programme for emigration from Germany and for the resettlement of Germans elsewhere.

Mr. Churchill opposed the Plan, but, according to Mr. Stimson (*On Active Service in Peace and War*, 1949), was 'converted by the argument that the elimination of the Ruhr would create new markets for Great Britain'. However this may be, considerations of this kind must have weighed with President Roosevelt. Mr. Byrnes, too, refers to a statement of the President that 'the real hub of the situation is to keep Britain from going into complete bankruptcy at the end of the war' (*Speaking Frankly*, 1947). In one of his outspoken counter-memoranda, Mr. Stimson made the rather relevant point that, whatever Great Britain's post-war difficulties might be, the British people would never accept such a remedy for the solution of their own difficulties.

Owing to a leakage in Washington, the essentials of the Morgenthau Plan became public property. The reaction of public opinion in the United States to the Plan was so hostile that all that President Roosevelt wanted was to be allowed to forget about this memorandum. The only gainer was Gobbels; for the Plan gave substance to his constant argument in the last phase of the war that anything was preferable for the German people to an Allied victory.

In a weakened form, the outlook of the Morgenthau Plan was still noticeable in the United States Directive to General Eisenhower of April 28, 1945. Except as he might consider it necessary to carry out the objectives of Allied occupation policy, he was to 'take no steps (a) looking toward the economic rehabilitation of Germany, or (b) designed to maintain or strengthen the German economy'.

In the economic programme adopted at Potsdam, the Big Three accepted the principle of treating Germany during the period of occupation as a 'single economic unit'. German productive capacity was to be maintained on a level to enable the German people to subsist without external assistance. Its living standards were to be no higher than the average in other European countries, excluding the United Kingdom and the Soviet Union. German monopoly capitalism was to be subjected to a process of decentralisation. War industries in the narrow sense and the future production of arms, ammunition and implements of war as well as of all types of aircraft and sea-going ships was prohibited. The production of metals, chemical machinery and other items directly necessary to a war economy was to be rigidly controlled and restricted to Germany's approved peace-time needs. Prohibited and excess industrial equipment was to be used for reparations and as payment for deliveries of agricultural and primary products from Eastern Germany. All that remained of the programme for the pastoralisation of Germany was the general directive that, in organising the German economy,

primary emphasis should be laid on the 'development of agriculture and peaceful domestic industries'.

Within less than a year it became apparent that the Allies would not administer Germany as an economic unit, and that the Level of Industry Plan adopted by the Control Council (March 27, 1946) was merely a scrap of paper. Even before the Allied *condominium* broke down completely in the political field, the economic division of Germany, ultimately consummated by separate currency reforms in the Western and Eastern zones of Germany, became apparent. To give priority to the economic recovery of Western Germany was for the Anglo-Saxon powers the only alternative to subsidising their own zones for an indefinite period at an annual cost to themselves of \$700 millions without even political returns from their Eastern Ally. The gradual abandonment of the dismantling policy in Western Germany was the logical consequence of this decision.

Truncation. The Allied action which hit Germany hardest was the territorial truncation of Germany. In the East this was the complement to the transfer to the Soviet Union of all the Polish territory east of the Curzon line. By this transfer Poland lost 180,000 square kilometers. On ethnological grounds, this decision could be as well defended as Hitler's claims to the *Sudetenland*. Once it had been taken, the only question was whether Hitler's first victim or Germany was to pay this item of the Soviet bill. The Big Three agreed at Yalta that Poland should receive 'substantial accessions of territory in the North and West', but that the 'final delimitation of the Western frontier of Poland should thereafter await the Peace Conference'. Marshal Stalin made no secret of his view that he would like to extend the Polish Western frontier to the River Neisse. Mr. Churchill agreed to moving the frontier into German territory, but remarked that 'it would be a pity to stuff the Polish goose so full of German food that he will die of indigestion'.

Then followed one of the Russian *faits accomplis*. Shortly before the Potsdam Conference, the Soviets transferred all German territory east of the Neisse to Poland for purposes of administration. With the understanding that this was not to prejudice the final determination of Poland's western frontier, the Potsdam Conference legalised this Soviet action. Beyond this, the Big Three included in the area under Polish administration the territory of the former Free City of Danzig and the whole of Germany east of the Oder-Neisse line with the exception of the portion of East Prussia that was allocated to the Soviet Union.

It is still obscure why the Western powers committed themselves at Potsdam to agree 'in principle' to, and to support 'at the forth-

coming peace settlement', the Russian request for the ultimate transfer to the Soviet Union of Königsberg and of the area adjacent to it. Perhaps the explanation is simply that, in any case, East Prussia was bound to fall either to Poland or to the Soviet Union. It was, therefore, a matter of relative indifference to the Western powers which of their two Eastern allies was to be the beneficiary of this territorial expansion.

The view expressed by Mr. Byrnes that the resources of Eastern Prussia—with taxable property valued at 2½ milliard dollars—should be considered as part of the reparations settlement may also have influenced the British and United States negotiators. If so, the Potsdam Protocol does not contain any evidence of the Russians having accepted such an interpretation. On the assumption that, both in fact and law, the Potsdam Agreement has broken down, the Western powers are as free in this respect as they are regarding the final frontiers of Poland. This does not, however, mean that this *de facto* situation is likely to be modified at any cheaper price than the *de facto* division of Germany.

In the West, Great Britain and the United States undertook commitments in writing, signed by Mr. Bevin and Mr. Byrnes respectively, to support at the Peace Conference the cession of the Saar Territory to France. In his speech in the House of Commons of June 4, 1946, Mr. Bevin had already anticipated this step. According to Mr. Byrnes' *Speaking Frankly* (1947), the two powers gave these formal promises in September, 1946 to induce the French to join in the merger of the three Western occupation zones. France, however, failed to respond. For the interim period, France proceeded, with the consent of Great Britain and the United States, to include the Saar territory in her own economic system by means of a customs union. Subject to confirmation by a peace treaty, France further tied the Saar to her apron string by a series of treaties which she concluded in 1950 with a Saar government of rather dubious democratic legitimacy.

International Control. In accordance with the Agreement on Control Machinery in Germany of June 5, 1945, the four occupying powers established a system of joint and separate international control of Germany for the 'period when Germany is carrying out the basic requirements of unconditional surrender'. The machinery of the Control Council and of the administration of Berlin could not stand the strain of growing dissension between the Western Allies and the Soviet Union.

For all practical purposes, the Allied *condominium* over Germany broke down in under two years. The Soviet blockade of Berlin, and

the counter-measures taken by the Western powers, had created a situation which, in the words of the identical Notes of the three Western powers to the Soviet Union of September 26/27, 1948 (Cmd. 7534—1948) amounted to a threat to international peace and security. Thus, Germany again presented a danger to peace, or was it Germany?

Effective international control of Germany is now necessarily limited to Western Germany. All that the Soviet Union can do by herself is to exercise a unilateral foreign control in her own zone of occupation. In Western Germany, the operative instruments are the Occupation Statute and the Tripartite Control Agreement of April 6/8, 1949; the Agreement for the Establishment of an International Authority for the Ruhr of April 28, 1949 (Cmd. 7677—1949); the Charter of the Allied High Commission for Germany of June 20, 1949 (Cmd. 7727—1949), the Petersberg Protocol of November 22, 1949 and the amending agreement of 1951.

The changes introduced by these agreements do not affect the international status of Germany. All four occupying powers maintain that, in law, the Four-Power *condominium* of the occupation powers for Germany as a whole still exists. Within their three zones, the Western powers have pooled the powers which, previous to these agreements, each of them exercised in its own zone. To the extent to which sovereign power in Germany does not still rest jointly with the four occupation powers, the three Western powers are the joint co-sovereigns of Western Germany. By treaties with third States which, thus, have recognised the new subject of international law, and by their own action, which rules out the possibility of annexation, the Western powers have established out of the vacuum created by Germany's *debellatio* a new subject of international law.

'In the exercise of the supreme authority which is retained by the Governments of France, the United States, and the United Kingdom' (Preamble of the Occupation Statute, April 6/8, 1949—Cmd. 7677, 1949), the three Western powers have agreed between themselves on a limitation of their powers as co-sovereigns of Western Germany. They are not committed by this Treaty to the German Federal Republic of Western Germany, which is not a party to the Occupation Statute. The Contracting Parties have expressly reserved to themselves the right to 'resume, in whole or in part, the exercise of full authority if they consider that to do so is essential to security or to preserve democratic government in Germany or in pursuance of the international obligations of their Governments'.

In addition, an extensive catalogue of powers explicitly reserved by the occupation authorities, and an additional article which pro-

vides for approval by the occupation authorities of any amendments of the Basic Law, or Constitution, of the Federal Republic, reaffirm the reality of the position : any power exercised by German authorities on the international and internal planes is self-government by virtue of delegated authority, granted on probation and with the right of revocation.

In the Petersberg Protocol of November 22, 1949, the Western occupation powers accelerated the process of devolution of functions to the Federal German Government. The purposes of the Protocol were defined by Sir Brian Robertson, Chairman of the Allied High Commission for that month, as follows :

‘ Firstly, it seeks to promote the prestige and authority of the structure of Government which has been created for the Federal Republic ; that is why we have proceeded by free discussions instead of a *Diktat*. Secondly, it seeks to reintroduce Germany into international political society ; hence the announced intention to encourage the participation of Germany in organs of international collaboration ; hence also the agreement for the establishment of German consuls and commercial representatives abroad. Thirdly, it seeks to remove causes of friction between the occupying powers and the German people.’

In the following year, the Federal Government obtained authority to sign treaties which become effective unless vetoed by the Allied High Commission within three weeks of signature. Western German consular and diplomatic services were also re-established with increased speed, and, in 1951, the Federal Republic was allowed its own Foreign Minister. By way of revision of the Statute further competences may be delegated to the Federal Republic. Thus, Allied sovereignty in Western Germany may be gradually reduced to vanishing point, or the Allies may decide to shortcircuit this process by the transfer of all their remaining powers to the German Federal Republic.

The Tripartite Control Agreement defines the relative say of each of the occupying powers in Western Germany. The unanimity principle applies to decisions on the approval of amendments to the Federal Constitution. Otherwise, but with one important reservation, decisions in the Allied High Commission are taken by simple majority vote.

- If one of the High Commissioners should be of the opinion that a majority decision conflicts with inter-Allied agreements on disarmament, demilitarisation, controls regarding the Ruhr, restitution, reparations, and a number of other economic interests, with fundamental principles for the conduct of Germany’s external relations or with ‘ matters essential to the security, prestige, and requirements of

the occupying forces', he may appeal to his government. Such an appeal serves to suspend action for thirty days, but not beyond if two of the governments indicate that the grounds do not justify further suspension. It is more likely that, on any of these questions, the United States and Great Britain see more easily eye to eye than either of them would with France. The very existence of this procedure, therefore, serves as a means of co-ordinating French policy in Western Germany with that of her Anglo-Saxon Allies.

The exception to the rule of simple majority refers to the control over German foreign trade and exchange. Whenever a decision of the Allied High Commission would involve increased need for 'assistance from United States Government appropriated funds', a system of weighted votes, in proportion to the funds made available to Germany by the respective Governments, applies. In no case, shall this Article reduce the 'present United States predominant voice' in the existing joint export-import and foreign exchange agencies or in any future successor organisations. Since September, 1949, Great Britain has ceased to make contributions to Germany which would entitle her to participate in such a competition with the United States. Thus, this provision symbolises the *de facto* supremacy of the United States in Western Germany.

The Charter of the Allied High Commission for Germany, a treaty between the three Western occupation powers, is based on the principle of tripartite organisation at headquarters. At this level, the Commission is divided into the Council, Committees, Subordinate Groups and the Secretariat.

The Council, composed of the three High Commissioners, is the supreme authority of the High Commission. The Committees are primarily of an advisory character, but the Council may delegate to them any of its executive functions. The Military Security Board is one of these Committees. The Subordinate Groups work under the supervision of the committees which are responsible for their activities.

Land Commissioners, who are directly responsible to the Council, represent the High Commission in each of the *Länder* of the Federal Republic.

A reserved list of subjects, such as matters involving the security and immunities of the occupation forces, care for displaced persons, and the administration of justice by Allied Courts, remains within the exclusive prerogative of each of the High Commissioners.

The establishment of the International Authority for the Ruhr (IAR) is complementary to the other steps taken by the Western powers for the reorganisation of their zones of occupation. It was

meant to allay widespread fear that the creation of a new Western Germany might be the prelude to the re-establishment of Germany's aggressive power. This step could not have been taken before; for, without unification of the three Western zones, Great Britain was neither prepared nor in a position to agree to any separate plan for the Ruhr. It was very much less than the French had expected. They had consistently agitated for the separation of the Ruhr from Germany. On this point, however, the other Western Allies were adamant.

The first official pronouncement on the internationalisation of the Ruhr was a tentative statement by Mr. Bevin in the House of Commons (October 26, 1945): 'There ought to be, not so much territorial changes, as an international control of this kind of thing, which cannot be entrusted to one people.' In his Speech in the House of Commons on June 4, 1946, Mr. Bevin voiced the view that the Ruhr should become a 'separate province under international control, to be fitted ultimately into a federal Germany'. M. Molotov was quick in scenting the potentialities of such a scheme. At the meeting of the Council of Foreign Ministers on July 10, 1946, he opposed any separation of the Ruhr from Germany, as advocated by France. He declared himself in favour of placing the Ruhr under inter-Allied Four-Power control 'with the object of preventing the revival of war industries in Germany'.

What happened was the establishment of an international control of the Ruhr, but without Soviet participation. There would have been little sense in giving to the Soviet Union a say in this key area of Western Europe without any hope of reciprocal concessions in her own zone of occupation or in Silesia, administered by Poland since 1945. Furthermore, the Soviet Union would have insisted on the unanimity principle in all matters of importance. This would have meant that the international authority would have had to work constantly under the shadow of the Soviet veto. In the light of the experiences of Soviet co-operation in the Security Council of the United Nations and in the Allied Control Council of Germany, Western reluctance to associate the Soviet Union with this venture, and, in addition, gratuitously, is easily understood. Membership of the IAR is limited to the signatory governments (Benelux, France, Great Britain, and the United States) and to Western Germany.

IAR is not much of an international authority. It does not exercise any territorial jurisdiction in the area under its control. It has neither rights of ownership nor managerial control of the coal, steel and coke industries within its jurisdiction. During the period of Allied occupation, IAR has no direct executive powers of its own.

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In dividing coal, coke and steel from the Ruhr between German consumption and export, IAR has to conform with the objectives of the Organisation for European Economic Co-operation³ and with the programmes approved, or decisions taken by the Organisation and with any agreement on the allocation of coal, coke and steel between the occupying powers. IAR may only fix the minimum, but not the maximum amounts available for export. The crucial issue is the amount of coke which is to be exported. The more German steel output increases, the more Germany herself requires the coke produced in the Ruhr. The ceiling of steel output is therefore, the Archimedian point in this complex nexus.

The United States and German interests are united in their desire to increase this ceiling beyond its present level of 11 million tons. For political and economic reasons, France opposes such a rise which would approximate to the annual steel production in the Ruhr before German rearmament started in earnest (14 million tons in 1936). The British Government, too, has to find a mean between its interest in the economic recovery of Western Germany and the British steel industry's fears of German competition in the world markets. The occupying powers thought it wise not to burden IAR with this issue. IAR is bound by the agreements on the level of steel production in Germany between the occupying powers. Owing to the intensification of the rearmament race, the question of German commercial competition in steel has become a subordinate problem. It has become merged into the wider issue of the Schuman Plan.⁴

Further tasks of IAR are to keep an eye on German governmental measures or commercial arrangements, which affect Ruhr coal, coke and steel, in order to check trends of a monopolist or discriminatory character. During the Control Period, the occupying authorities may also make IAR responsible for the supervision of patterns of ownership in the Ruhr industries and trade to prevent 'excessive concentration of economic power' and for keeping supporters of the Nazi Party out of key positions in the Ruhr industry and its trade and marketing organisations. The chief functions of the IAR are to serve as a clearing house of information on, and as an agency of investigation into, the activities of Germany's steel and coal barons in the Ruhr. IAR may also be charged with the protection of foreign interests in the Ruhr.

Pacts of Mutual Assistance. Finally the Allies have concluded a string of bilateral treaties on mutual assistance against German aggression. They fall into four different categories.

³ See below, p. 603 *et seq.*

The first type is represented by the Anglo-Soviet Alliance of May 26, 1942. According to this Treaty, in the case of German aggression against one of the Contracting Parties in the post-war period, the other 'will at once give to the Contracting Party so involved in hostilities all the military and other support and assistance in its power'. This Article remains in force for a minimum of twenty years or until, before then, the Contracting Parties have mutually agreed that it is superseded by an effective collective system for the preservation of peace.⁵

The second and third types differ from the Anglo-Soviet Alliance in that no mention is made of any ultimate substitution of the duties of the contracting parties by collective arrangements. They differ from each other in the definition of the *casus foederis*. In the Franco-Soviet Treaty of Alliance and Mutual Assistance of December 10, 1944 the duty of assistance becomes operative only in the case of German aggression or of a threat of German aggression. In the Czechoslovak-Soviet Treaty of December 12, 1943, and in the Polish-Soviet Pact of April 21, 1945, assistance is due to the Contracting Party which becomes involved in hostilities with an aggressive Germany 'or with any of the States which may unite with Germany directly or in any other form in such a war'.⁶

The fourth and fifth types have in common that they were concluded after the establishment of the United Nations and are designed to operate in accordance with the Charter of the United Nations. The Dunkirk Treaty between Great Britain and France of March 4, 1947⁷ and the Treaties of Mutual Assistance between the Soviet Union and the Eastern European countries and between each pair of these States share this feature. There is, however, a difference. While the Dunkirk Treaty is aimed exclusively at Germany, the Eastern Treaties are directed against Germany and any other State which may unite with Germany in a policy of aggression against one of the Contracting Parties.

In order to assure France and the Soviet Union that the United States were not going to withdraw again from Europe as they had done after the First World War, the United States took the initiative in proposing a collective treaty of mutual assistance against renewed German aggression. France, Great Britain, the Soviet Union and the United States were to be the Contracting Parties. As the Soviet Union might have preferred, the Treaty was to be concluded for twenty-five or forty years. In spite of the fact that Marshal Stalin

⁵ See below, p. 525 *et seq.*

⁶ See below, p. 517 *et seq.*

⁷ See below, p. 519.

approved in principle of the idea, M. Molotov made it clear that the Soviet Union did not want such a treaty.

The leaders of the Soviet Union were not so much frightened of renewed German aggression as of the United States becoming with their own concurrence a permanent factor in the maintenance of peace in Europe. The German problem had transformed itself in Russian eyes into the American problem, just as for the Western world it had changed into the Soviet enigma. It had become overshadowed by more immediate sources of danger to international peace and security.⁸ This was the result of years of talks on the future of Germany and of ever-changing experiments on the German body politic.

The plans of the Allies, and their policies in Germany, may be challenged on many grounds. Power politicians of the Hitlerite variety may consider Allied policy towards Germany ridiculously weak. When they are among themselves, they may point to the fact that German industrial capacity has suffered far less from the war than outside observers think, and German propaganda admits. They may rightly count among their blessings the practically complete integrity of the social structure of Western Germany which produced Nazism, and may well produce another variant of virulent German nationalism. They may tell each other how cleverly former Nazis have been smuggled back into administrative key positions or are only waiting to be reintegrated into the political and economic life of Western Germany. They may also prove right in thinking that the lack of man-power in Western Europe will give them another golden opportunity to pose as the vanguard of Western civilisation against Eastern barbarism.

Moralists within the United Nations may wonder at the compatibility of the truncation of Germany with Point Two of the Atlantic Charter.⁹ They may remember with dismay the tragedies which accompanied the forcible removal of millions of Germans from Czechoslovakia, Poland and from the parts of Germany ear-marked for the Soviet Union and Poland. They may have guilty consciences over the delays in the repatriation of German prisoners of war, over tortuous denazification procedures or over some of the less creditable aspects of dismantling policy in Western Germany.

Allied policy in Germany is open to any of these reproaches, and, probably, to many others beside. Yet none of these shortcomings is responsible for the complete fiasco of this policy. The policy of the occupation powers has failed because a vital assumption has proved to be wanting: Allied unity in the post-war period.

⁸ See below, pp. 517 *et seq.* and 595 *et seq.*

⁹ See above, p. 312.

Had Allied unity survived victory, it would soon have become apparent that the German problem was merely a question of firm international policing and of efficient administration. In 1945, Germany had no alternative but to submit to any policy on which the United Nations had agreed. As after the Thirty Years' War, Germany was again reduced to a geographic term, to a political no man's land. For her, as for any other nation, the will of the Allies was law. Germany or any other would-be aggressor no longer presented a menace to the Big Three. As long as Allied unity continued, President Roosevelt was fully justified in predicting in his broadcast on Christmas Eve, 1943, that no possibility existed of any 'aggressor nation arising to start another world war'. So long as this assumption stood, it was immaterial what policy the Allies adopted with regard to Germany. Any danger to world peace and to the Allies themselves would be of their own making.

As it was, none of the Allies could afford the luxury of considering any aspect of the German problem irrespective of its repercussions on its own place in world power politics. The nearer any of the chief Allies was situated geographically to Germany the more this applied. The United States could still afford a relatively detached attitude. Great Britain stood between her Anglo-Saxon partner and her Continental Allies. German bombing and submarine warfare, however, had brought Britain nearer to the Continental outlook on the German problem. Thus, in a world in which war between three of the former Allies and the Soviet Union had become the only likely major war, the issue of Germany presented itself in a new setting.

Once Germany was considered in terms of potentially conflicting inter-Allied policies, she became a typical power vacuum and exercised the irresistibly attractive force of such an area in a system of power politics. Neither the Western powers nor the Soviet Union could afford to ignore Germany's strategic position in Central Europe, the size of her population, or her industrial and agricultural capacity.

The Allied zones of occupation changed their political function. They no longer served the primary purpose of assuring Germany's compliance with common Allied policy. They became security zones of the former Allies against each other. Plans for Germany were no longer considered in the light of vanished assumptions of bygone days, but had to be scrutinised by a different test: How were they to affect the position of the potential enemies of tomorrow?

Official declarations and public speeches of Allied statesmen shunned this disagreeable reality. Discussions between the occupying powers were still couched in wartime terminology. With varying shades of justification, each side posed as sole executor of defunct

Allied unity and gravely charged the other with flouting the last wishes of the beloved deceased.

Necessarily, these duels in the conference room, in the press and on the air, increasingly assumed an air of unreality. Both sides affirmed their ardent desire to see the unity of Germany ultimately re-established. In fact, in their own zones they took—and had to take—every day measures which stabilised the de facto division of Germany. In theory, each of the occupation powers aimed at a maximum of uniformity in the treatment of its own zone. In fact, the machinery of the Control Council came to a standstill, and diversity of treatment in the Western and Eastern zones could hardly have been greater. Even within the Western zones, the French authorities stood out longest for doing things in their own particular, and often peculiar ways. When one side spoke of the need of giving priority to the economic recovery of Germany, the other understood this to mean the breach of inter-Allied compacts. Disarmament and demilitarisation in one's own zone was spoliation if carried out in the other. Denazification was replaced by growing competition for the goodwill of the Germans, irrespective of their past record.

If ever there was a clear case in which, not only in fact, but also in law, an agreement had broken down, it was the Potsdam Agreement. It was based on the major premise of unity between the four occupying powers. When, in the face of increasing Soviet obstructiveness, first the United States and Great Britain and, subsequently, the three Western powers co-ordinated their policies, and the Soviet Union went her own way, mutual insistence on the continued validity of the Potsdam Agreement only exacerbated relations between the two sides.

In any case, the occupying powers have succeeded with the minimum of delay in reintroducing the German people as an active factor in the international game. Possibilities of playing off the West against the East and vice versa vary. The *Gestapo* methods practised by the Russians and their German executive organs leave Eastern Germans with the alternative of either becoming obedient instruments of Soviet policy or of emigrating to the West. In Western Germany some scope exists at least for a game of bluff. In their hearts, Germans in the Western zones know that they have no choice. Their own bad consciences over the misdeeds perpetrated by the German armies and their hangers-on in the Soviet Union, the experiences of millions of German prisoners of war in Russia and their fear of Communism are sure barriers against anything beyond a Platonic flirtation with the East. Nevertheless, they play the card of the 'Communist danger' with a certain amount of success,

especially in their relations with the United States occupation authorities.

Thus, a situation has been created in which the world has to reckon with two Germanies, each of them a pawn of the world powers, and each of them hoping one day to become a queen. Both Western and Eastern Germany claim to speak for the whole of Germany. Two new *irredentas* have been added to an already too lengthy list. These aspirations can be attained by either side only as the result of war, in the circumstances necessarily a world war, or at the price of a diplomatic retreat on the part of either the Western powers or of the Soviet Union of a magnitude which is the equivalent to defeat in war.

Inter-Allied disunity has recreated the German problem. Again it reflects sharply the *malaise* of the world at large. Rightly, but in vain, had Mr. Byrnes warned all concerned in his speech at Stuttgart (September 6, 1946): 'It is not in the interest of the German people or in the interest of world peace that Germany should become a pawn or a partner in a military struggle for power between the East and the West.'

The question of a peace treaty with Germany remains in abeyance. Under their Treaties of Alliance with each other, France, Great Britain and the Soviet Union may not negotiate or conclude, except by mutual agreement, any peace treaty with Germany. If the view is taken that, owing to *debellatio*, Hitlerite Germany has come to an end, the transition from a state of war to peace between the United Nations and Germany does not present any difficulties; for then Hitlerite Germany was eliminated as a subject of international law when, on June 5, 1945, the Allies assumed supreme control over Germany.

Those, however, who hold different opinions, are faced with an additional legal tangle over the problem of Germany. They have to make up their minds whether the Anglo-Soviet and Anglo-French Treaties of Mutual Assistance are still valid or have broken down in law as they have broken down in fact.¹⁰ Even then they are not at the end of their troubles. They have still to ponder over the vexed question whether they can terminate the Four-Power *condominium* over Germany by the conclusion of separate peace treaties with their respective zonal creations, the Federal Republic of Western Germany and the Democratic Republic of Eastern Germany.

¹⁰ See below, p 525 *et seq.*

CHAPTER 24

THE UNSETTLED FRONTIER

'The nations who did the fighting are very tired' — a theme
at the Peace Conference of Paris 1946

THE German problem unduly overshadowed the other issues which the Allies had to face. This question was hardly more complex than the Japanese puzzle, but it was nearer in space and mind to public opinion in Europe and on the Eastern fringe of the United States. Over-concentration on the Atlantic area and Europe became more than ever evident during the Berlin Blockade. Like a hypnotised chicken, public opinion in the Western world stared at the white chalk line drawn for them by the Soviet Union in Berlin, while in China Soviet diplomacy achieved its greatest triumph.

The unexpectedly quick surrender of Japan, so detrimental to continued Allied unity, confronted the Allied leaders with the task of making peace simultaneously in Europe and in the Far East. To fight and win a world war was difficult enough. To make world peace was a still more arduous task.

Compared with this tremendous undertaking, the peace-makers of 1919 had been in an enviable position. In the main, they could concentrate their energies on redrawing the maps of Central, Eastern and South-Eastern Europe. The question of dividing the German colonies and the territories detached from the Ottoman Empire was solved by taking the line of least resistance, by admitting, in other words, that possession is nine points of the law. The problem of the missing tenth was solved by the brain-wave of League mandates.¹

Two additional factors made the burden of Allied statesmen still heavier if, in this context, such a high-sounding word should not savour of an undue touch of irony.

In 1919, the leading victorious power, the United States, exercised a decisive and restraining influence on the land-hungry and more unprincipled among her Allies. In 1945, the Soviet Union commanded the inner strategic lines on all her frontiers. Her leaders were resolved to make the most of their opportunities, and they at least were not tired men. Carried on by the impetus of their astounding victories, assisted by the willingness of the Western war leaders, in the interest of post-war Allied unity, to stretch patience to the limit, and backed by an immense amount of goodwill on the part of

¹ See below, p. 652 *seq.*

public opinion in most Allied countries the men in the Kremlin knew that, without undue risk, they could go a very long way.

All along the frontiers of the Soviet Union, they probed for soft spots. Any of the problems which awaited settlement—Austria, Trieste, Tangier, the Italian colonies, Outer Mongolia, Korea, Formosa and Japan—could be used as handy levers. The Soviets contributed two of their own classic bones of international contention to the agenda: the Black Sea Straits and Persia.

Finally—and unfortunately, this sorry theme repeats itself every time—the rift between the peace-makers of the Second World War showed itself at a much earlier date than after the First World War. It created such an intensity of mutual suspicion and hostility that neither side could think any longer in terms of mapping out the frontiers of peace. In these changed circumstances, the task of the peace-makers was to delimit with the maximum of grace the likely fronts between potential enemies.

Once all concerned had faced up to this disagreeable reality, argument on the basis of war aims, by then out-dated, became meaningless. The Soviet Union pushed as hard as she could without risking the danger of an immediate armed clash with her former Allies. The Western powers gave way grudgingly where they could not help it. Gradually, however, continuing Soviet pressure forced them to define the issues over which they would not budge. Where one side was in exclusive control, it did what it pleased. Constitutional inhibitions, however, prevented the Western democracies from imitating the totalitarian ruthlessness of their Eastern ally.

To generalise in this way on complicated questions, every one of which is the jealously guarded *domaine réservé* of renowned specialists, is to invite trouble. Yet it is the specific function of the observer of international relations to penetrate—to him—unessential aspects of individual problems to their common denominator. If this cannot be found, he, like any other research worker, has to admit the singularity of a particular phenomenon. In the relations between the Western powers and the Soviet Union, however, the common measure is only too apparent. To put the emphasis on the individual and technical questions over which, in each case, the Allies chose to differ would be to overlook the wood for the trees. As a matter of fact, this method of treatment is suggested not only by the evidence of the material that is publicly available but is also confirmed by the personal experiences of those whose tedious task it was to sit on the commissions in question, but who are not yet free to speak.

Whether the issue was currency reform in Germany, the Austrian Peace Treaty or Korea, the concrete problems involved were usually

what mattered least. The general experience of those engaged in these negotiations may be summed up in the words of Mr. Byrnes' description of his own experiences in the Council of Foreign Ministers: 'The discussion made it clear that he had no idea of discussing the treaty (of mutual assistance of the Four Powers against German aggression) in a serious manner but was simply looking for excuses for delay.' 'He' stood for M. Molotov and, as a rule, it was the Soviets who had a vested interest in marking time. It appears, therefore, sufficient to use the case studies from which these generalisations were originally drawn merely as illustrations of all-pervading trends. As this survey of unsolved problems began with Germany, it may be convenient to set out from the West to the East on the journey along the border zones between the two worlds.

AUSTRIA

The inter-Allied battle for Austria opened with prolonged negotiations over two questions: the various Allied occupation zones and the participation of the Western powers in the control of Vienna. It took until July 9, 1945 to conclude the basic Four-Power agreements on Austria. Yet, when the Potsdam Conference opened, the Soviets still made difficulties about the British forces actually moving into the zone of occupation allocated to the United Kingdom. It took a direct complaint from Mr. Churchill to Marshal Stalin to induce the Soviet commanders on the spot to withdraw their troops to their own zone.

The second phase was fought on the level of procedure. At the meeting of the Council of Foreign Ministers in April, 1946, M. Molotov still roundly refused even to put the question of the Austrian Treaty on the agenda. 'The Soviet delegation,' he declared, 'is not ready to give it consideration at this time. Of course, we will study with full attention the proposal of Mr. Byrnes, and will advise when we are ready to discuss it.' In the following June, M. Molotov relented somewhat and consented to one of M. Bidault's celebrated compromises. The 'examination of the Austrian question' was the form which proved acceptable. In December, further astounding progress was made. M. Molotov agreed to the proposal that Deputies of the Foreign Ministers should actually be appointed for the drafting of the Austrian Treaty.

The third phase commenced in 1947 and is still dragging on: disagreement on the substance of the Treaty. From May to October, 1947, the Treaty Commission in Vienna held 85 meetings, without being able to agree on a single article. Gradually, controversy narrowed down to two points: the Yugoslav claims to Southern

Carinthia, and definition of German assets in Austria. Since Yugoslavia's defection from the Soviet fold, the former question has assumed a different complexion. It is still of interest to the Soviet Union, but only as part of her ideological war with the heretic. The latter problem was more important.² It involved the control of the greater part of Austria's industry, including Austrian oil production and oil reserves. Western and Eastern experts disagreed on the scope, the capacity and the percentage of the undeveloped Austrian oilfields which should be allocated to the Soviet Union. When all other issues proved amenable to settlement, the Soviet Union linked the question of the Austrian Treaty with the problem of Trieste³ and re-opened the question of denazification in Austria.

At a relatively early stage of these protracted proceedings, at the Moscow meeting of the Council of Foreign Ministers in March, 1947, Mr. Marshall warned the Soviet Union that the United States was not prepared to brook indefinite delay. The United States Secretary of State indicated that, under Article 14 of the Charter of the United Nations, his country might bring the issue of the Austrian Treaty before the United Nations. According to this Article, the General Assembly may recommend measures for the peaceful adjustment of any situation which it deems likely to impair the general welfare or friendly relations among nations. It has not, however, any power of decision.⁴ Thus, this hint did not unduly impress the Soviet leaders.

The issue is still Four-Power agreement or a separate treaty between Austria and the Western powers. A separate treaty would not, however, remove the Russians from their zone of occupation. If it led to a one-sided withdrawal of the Western forces, the conclusion of such a treaty would only play the Soviet game. This puts the Western powers in a quandary. Austria cannot afford the indefinite prolongation of Allied occupation. Austria and the Western powers desire the withdrawal of all occupation forces. The Russians, however, are not in any particular hurry to leave Austria. Therefore, so long as the Soviet forces remain in Austria, those of the Western powers must stay. The Soviet Union determines the law of action or inertia in Austria.

Why should the Russians be interested in the continuation of this state of affairs? The Soviet leaders know that Austria has opted for the West. In a courageous speech in March 1948, the Austrian Chancellor compared Austria to a 'child between two divorced parents; from one side she receives nothing but blows and from the other

² See above, p 347

³ See below, p 403

⁴ See below, p 490

refuge. Who can be surprised that she seeks this refuge ?' In a series of elections, the Austrian people has shown that, on this point, nothing divides the two main parties, the (Christian Social) People's Party and the Social Democrats. Between themselves, these represent more than 90 per cent of the Austrian voters. The assistance granted to Austria by UNRRA, the United States and Great Britain direct, and Austria's inclusion in the European Recovery Programme have proved to the Austrian people that the Western powers mean to help them, while all they have to expect from the Soviet Union is unscrupulous exploitation.

The men in the Kremlin realise that their policy of military and economic imperialism is not likely to assist in the Communist indoctrination of the Austrian people. They appear, however, to be more concerned with the material benefits which they derive from their continued occupation of Austria. In this way, they can more easily intensify the eastward orientation of Austrian economy in their zone than they could from the outside. Furthermore, continuation of the existing state of affairs acts as a constant drain on the man-power and financial resources of the West.

Finally, the strategic aspect of the matter is important. Under the Peace Treaties with Hungary and Rumania, the right of the Soviet Union to maintain troops in these countries is made dependent on the need for protecting their lines of communication with their Austrian zone of occupation. As Hungary and Rumania are now fully co-ordinated, this aspect of the matter has probably lost some of its importance. Still, the maintenance of Soviet troops in Hungary and Rumania is an additional guarantee against tendencies towards Titoism in these countries and acts as a constant threat to Yugoslavia. However this may be, even the occupation of parts of Austria also has its strategic value.

It is arguable that the Soviet Union would only gain from a withdrawal of all occupation forces. The Russian-controlled armies of Czechoslovakia and Hungary stand, and will remain, at Austria's frontiers. Once withdrawn, the troops of the Western powers would in all likelihood only return in case of open war. Moreover, the withdrawal of all the occupation forces from Austria would deprive the Western powers of valuable overland communications with Yugoslavia. Such considerations may weigh with the Soviet leaders if the Western powers should be willing to pay a sufficiently high price for the withdrawal of the Russian occupation forces. Meanwhile, from the Soviet point of view, the continuation of the present impasse has its tangible advantages. Since the Communist victory in China, there is much to be said for the view that the Soviet Union

can only gain by avoiding any major war, and that her military strategy in Europe is primarily defensive. On this assumption, the Soviet occupation zone in Austria protects part of the rear of the two most south-westerly peoples' republics and bars the way for any would-be aggressor to Galicia, Southern Russia, and the Black Sea coast. To any Western mind it may seem sheer lunacy to think in such terms. Is this argument, however, more far-fetched than the British strategic axioms on India's North-West Frontier in the second half of the nineteenth century⁵?

Soviet strategists are also likely to remember the routes of expansion chosen by the Habsburg Empire. They are bound to bear in mind, too, that Hitler's *Anschluss* of Austria heralded German domination of the Danube Basin and was the prelude to the German invasion of the Soviet Union. They are probably aware, too, of the speculations of 'planetary' strategists in the West on the value of the possession of the Danube Basin for a counter-attack from the West against the Soviet Union. 'In that event, the Russian front would be greatly extended from the Baltic to the Caspian, and over that enormous length the attacker would be able to co-ordinate his attacks in time and distance, not only from the northern plain of Europe but also over the Carpathians and through Rumania; simultaneously, he could spread out towards Leningrad, Moscow and Kiev' (F. O. Miksche and E. Combaux, *War Between Continents*, 1948).

Finally, since the days of the invasions of Germany by the Huns, the Danube Basin has been occasionally used as a vantage point of attack westwards along the Danube valley, across Bavaria and towards the Rhine. In view of the geographic shape of the Danube area, however, such a manoeuvre is more difficult to execute than operations in the opposite direction. Thus, the chief value of the Danube Basin for the Soviet Union consists in its defensive, rather than its offensive, potentialities.

TRIESTE

With the break-up of the Habsburg Monarchy, the Julian Region once more became a problem, as it had been throughout the centuries prior to its incorporation into the Habsburg Empire. This process of patient expansion commenced in 1374 with the acquisition of the County of Istria by the Habsburgs and was completed in 1797 with Napoleon's transfer of the Venetian territories to the Habsburgs and, finally, the allocation of these territories to Austria at the Congress of Vienna.

⁵ See above, p. 47.

Since the days of Rome, this area with its routes and passes had been a link between Central and South-Eastern Europe and the Mediterranean. It was the primary meeting point of the Germanic and Mediterranean races. From the sixth century A.D. onwards, Slav tribes immigrated into this borderland and settled there. In recognition of Slav preponderance in this area, most of the Julian Region was transferred to Yugoslavia by the Peace Treaty of 1947 with Italy. The important exception was Trieste and a strip of territory surrounding it.

During the Habsburg Empire, Trieste had served the wide hinterland of the Austro-Hungarian Empire as the chief port for its overseas trade. During the inter-war period, its importance had considerably declined. To leave Trieste with Italy was difficult. Fascist Italy had indulged in a policy of forcible denationalisation of the Slavs under her control, and the strategic importance of Trieste for the control of the Adriatic rivals its economic potentialities. It was still less acceptable to the Western powers to concede Yugoslavia's demand for the whole of the Julian Region. The great majority of the inhabitants of Trieste are Italians. At the time when Trieste's future was decided, Yugoslavia was Moscow's staunchest supporter and not likely to maintain the character of Trieste as a free port in the interest of international trade. Moreover, Austria's dependence on the use of Trieste primarily for her imports, and to a lesser extent for exports, had to be kept in mind.

Fortunately for the Western powers, M. Molotov was in a quasi-judicial mood on this issue. At the London session of the Council of Foreign Ministers in September, 1945, he had qualified his support of the Yugoslav claims by the rider that it would be 'proper for the Italians to stay in the territories which are Italian in character', and he demanded a 'just decision' on Istria and Trieste. As the Soviet Union then still hoped for a victory of the Communist-led Popular Front in Italy, there were good reasons for M. Molotov's detachment.

In response to another of M. Bidault's constructive compromises, the Four Powers explored the possibility of making Trieste a Free Territory with an international regime under the control of the United Nations. The Western powers, however, remembered the precedent of Danzig and the ease with which Nazism had captured the city from within. They, therefore, wanted to place the Governor of the Territory in the strongest possible position. The Soviet Union wished to put the emphasis on a popularly elected legislature. Thus, the Western democracies, fearful of a conquest of Trieste by Communism from within, favoured an authoritarian regime, while the Soviet Union virtuously posed as the champion of democracy.

A French draft which was nearer to the Anglo-Saxon proposals than to the Soviet draft was adopted at the Paris Peace Conference by 15 votes to 6. The solution reached in the end was embodied in three annexes to the Peace Treaty with Italy. At its 91st meeting in January, 1947, the Security Council gave to all three documents the assent required under the Peace Treaty.

The vexed issue had been brought to an apparently successful conclusion. This, however, was too good to be true.

Allied occupation of the Free Territory was to terminate with the appointment of the Governor by the United Nations. Yet no candidate could be found who suited both the Western powers and the Soviet Union. The office of the Governor was designed as the linchpin in the Provisional and Permanent Statutes. By failing to agree on the person of the Governor, the Allies made sure that, in spite of having bestowed their blessings on the provisional and permanent Statutes, neither Statute could in fact be applied.

Thus, Allied wartime occupation continues. The area is still divided into two zones by the Morgan line, agreed in June, 1945 between General Morgan, Chief of Staff to General Alexander, and his Yugoslav opposite number. Zone A, including Trieste, is held by British and United States forces, and Zone B is occupied by units of the Yugoslav Army. All that has changed is that the latter are no longer outposts of the East at the southern end of the 'iron' curtain.

In March, 1948, the Western powers proposed that Trieste should be restored to Italy. The Russians promptly rejected this suggestion. Trieste was less a local issue than ever. It had become one of the danger points of the East-West world frontier. Thus, necessarily, it was transformed into an object of world politics and strategy. To return Trieste to Italy was to decide the matter in favour of the West. To hand it to Yugoslavia was no longer a solution which appealed to the Soviet Union. The only ground on which the establishment of the Free Territory recommended itself was that it equally displeased all concerned. Antagonistic powers have solved problems of this kind in the past by means of neutralisation of mutually coveted territories. On the surface, the peace-makers of 1945 fell back on this device. By linking the key-organ of the Free Territory with the Security Council, however, they made sure of hauling Trieste back on to the heap of problems yet unsolved. Owing to Yugoslavia's defection from the Soviet camp, the issue has assumed a different complexion and largely been reduced to a sore in the relations between two minor powers. Until Italy and Yugoslavia agree to a settlement, Zone A, which includes the town and

port of Trieste, is likely to return increasingly to Italian de facto control, whereas Zone B tends to become assimilated to Yugoslav one-party rule.

TANGIER

The problem, which, during the inter-war period, had been settled by the internationalisation of Tangier under the Statute of December 18, 1923 (revised in 1928), was reopened by the Spanish de facto annexation of Tangier in 1940. Spain allowed the establishment there of a German Consulate-General, which soon became the centre of German espionage in North Africa. By 1944, the fortunes of war had sufficiently changed to make it commendable to General Franco to close the German Consulate-General and to evacuate his Nazi friends to Spain. After the surrender of the German forces in May, 1945, France pressed for an early discussion of the Tangier question. The three Western powers arranged for a meeting in Paris. They were surprised to learn that, as a world power, the Soviet Union was interested in any international conference and desired to participate in these discussions.

At the Potsdam Conference, the Big Three agreed that, 'in view of its special strategic importance', Tangier should remain internationalised, and that the question should be discussed in the near future at a Four-Power conference. This meeting took place on August 10, 1945. In the Final Act of the Conference of Paris of August 31, 1945 (Cmd. 6678—1945), the powers concurred in the establishment of a provisional regime on the basis of the Statute of 1923, but with the inclusion of the United States and of the Soviet Union on a basis of parity with Great Britain in the International Legislative Assembly of Tangier, in the Committee of Control and in the Mixed Tribunal.

Again the Soviet Union failed to see matters in the same light as her Western allies. With some justice, she advocated the exclusion of Spain from the international administration of Tangier until 'General Franco's regime in Spain, which was established with the support of the Axis Powers and which in no measure represents the Spanish people, shall be replaced by a democratic regime' (Declaration by the Soviet Delegation at the Paris Conference).

As Spaniards formed the majority of the European population of Tangier, and the City depended on Spain for its food supply, the Western powers were not inclined to agree to such a purge. They made, however, one concession.

The British, French and United States Delegations declared that

Spain should participate in this conference, but should not be invited 'as long as the present Government in Spain continues in power'. The Four Powers had agreed that the conference, which was to draw up a definitive regime for Tangier, was to take place within six months. General Franco did not, however, oblige the United Nations by quietly withdrawing from the scene, and his democratic opponents did not see their way to take any effective action against him. Thus, the contemplated conference did not take place. Soviet opposition—or the tardiness of the Western powers in liquidating a Fascist regime—had produced another interregnum of indefinite duration.

THE ITALIAN COLONIES

The wrangling of the victors over the former Italian colonies would make a perfect satire.

The Dodecanese Islands may be exempted from this tale. The Western powers were agreed that these fruits of Italian pre-Fascist aggression should be handed over to Greece. For a time, M. Molotov was not prepared to pronounce on this question in isolation. Mr. Byrnes, however, happened to surprise M. Molotov in one of his more mellow moods and obtained the unexpectedly gracious consent of his Soviet colleague to this act of ethnological justice. Provision was made in the Peace Treaty of 1947 with Italy for the transfer of these islands to Greece. Less than two months after the signature of the Peace Treaty, the British military authorities in the Dodecanese Islands effected their transfer to Greece.

The African colonies of Italy were a different proposition. The fate of Eritrea, Italian Somaliland and Libya, administratively divided into Tripolitania, Cyrenaica and Fezzan, was to be decided.

Experts are unanimous on the negative features of these colonies: adverse trade balances, limited opportunities for settlement, plenty of desert and little water, sparse population and lack of natural resources. Three million people in these three colonies inhabit over a million square miles. In spite of the apparent unattractiveness of these apples of temptation on the tree of the Atlantic Charter, the serpent knew how to break down the good intentions of four just men.

On the first day of the Potsdam Conference, Marshal Stalin gave his version of the trusteeship conception. He calmly stated that the Soviet Union 'would like some territories of the defeated States'. The Soviet Delegation promptly submitted a paper in which it was suggested that the Soviet Union should be named the trustee of one

of the Italian colonies. President Truman did not want to rule out a discussion of this topic, but thought that this matter should be left to the Peace Conference. Mr. Churchill warned that 'any marked change in the status quo' in the Mediterranean required careful consideration, and if the Soviet Union desired to 'acquire a large tract of the African shore', this would have to be studied 'in relation to many other problems' (J. Byrnes, *Speaking Frankly*, 1947). After this 'exchange of views', as the Protocol so aptly described a rather heated and tense discussion, it was decided to refer the subject to the Council of Foreign Ministers.

Once the Soviet Union had come out in favour of individual trusteeship for each of the three colonies—one for the United States, one for the United Kingdom, and one for herself—it was to be expected that the United States should become enamoured with the idea of collective trusteeship.

The United States submitted her plan to the September, 1945 meeting of the Council of Foreign Ministers. The Security Council was to appoint an administrator for each of the three trust territories. He was to be assisted by an Advisory Council, consisting of the Big Four, Italy and a representative of the people of the territory. After ten years, Libya and Eritrea were to become independent. The trusteeship over former Italian Somaliland was to last for an indefinite period.

M. Molotov insisted on the principle of individual trusteeship and expressed a marked preference for Tripolitania, where the Soviet Union could apply its 'wide experience in establishing friendly relations between different nationalities'. He wondered too, whether the Security Council would find it easy to agree on the persons of the administrators.

Mr. Bevin did not commit himself on the United States scheme, as applied to Eritrea and Italian Somaliland, and played with the possibility of giving Ethiopia an outlet to the sea. He favoured, however, such a 'great, new and untried experiment' for Libya, 'because Britain wished to avoid conflict in this area between the great powers'. The British position was further defined by the war-time promises made to the Senussi in Cyrenaica that they would 'in no circumstances again fall under Italian domination' (Statement by Mr. Eden—January 9, 1942).

M. Bidault had his doubts on the wisdom of attempting a collective trusteeship. In view of his own problems with Arab nationalism across the border, he did not favour the idea of independence for Libya in the immediate future. He suggested that Italy should be the trustee of her own former colonies.

By the April session of the Council of Foreign Ministers in 1946, M. Molotov had worked out his own version of collective trusteeship. It was designed to take the wind out of the sails of the United States and of France; two-power trusteeships with Italian participation. In order to tease Mr. Bevin beyond endurance, he exemplified his scheme by reference to Tripolitania, which might be administered jointly by the Soviet Union and Italy.

Mr. Bevin countered this move by suggesting immediate independence for the whole of Libya. To M. Molotov this was certainly preferable to the idea of British trusteeship over Libya or part of it; for, rumours had reached his ear that Libya was to be the British alternative military, naval and air base to Egypt and Palestine.

M. Bidault, however, objected to the British proposal. Obliging, M. Molotov then expressed himself in favour of the original French plan for Italian trusteeship. This move had the additional advantage of displeasing Mr. Bevin and of assisting the Italian Communists. Mr. Byrnes killed incipient Franco-Soviet co-operation on this issue by promising support to a modified French proposal. In ten years, the trust territories should receive full independence. M. Bidault could not agree to this, and Mr. Byrnes returned to the advocacy of his collectivist pet child.

In June, 1946, the Foreign Ministers agreed on a solution which merely meant an adjournment of the question. This was incorporated into the Peace Treaty with Italy. Italy renounced all rights to her African colonies. Pending their final disposal, the existing military administration was to continue. Within one year from the coming into force of the Peace Treaty (by September 15, 1948), the Big Four were to determine jointly on the final disposal of these possessions. In a joint Declaration, the Four Powers undertook to make their decisions 'in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of other interested Governments'. In the absence of agreement, the matter was to be referred to the General Assembly of the United Nations for a recommendation. The Four Powers undertook in advance to accept such a recommendation and to give it effect.

In accordance with the Declaration, the Deputies of the Foreign Ministers sent a Four-Power Commission of Investigation to the three Italian colonies 'in order to supply the Deputies with the necessary data on this question and to ascertain the views of the local population'. The Commission was instructed to refrain from making recommendations and to confine its report to facts. Only press summaries of the Report were published.

One point clearly emerged. The Commission found a general consensus of opinion among non-Italians in all three colonies that they did not wish to return to Italian rule. In an Address at Chatham House (*The Ex-Italian Colonies*, 25 *International Affairs*, 1949), Mr. Stafford, the Head of the United Kingdom Delegation, revealed that the members of the Commission did not always find it easy to agree on what were facts and judgments outside their terms of reference. The production of witnesses by individual delegations, too, was somewhat coloured by intelligent anticipation of results. Thus, in Tripolitania, it appeared to Mr. Stafford as if one delegation found only the 'most tattered and miserable-looking objects imaginable', while another specialised in 'well-dressed, fat men'.

Shortly before the expiry of the term of Four-Power jurisdiction, the Big Four made a last attempt to settle the issue among themselves. The Soviet Union took the initiative in asking the other three powers to hold a special meeting of the Council of Foreign Ministers and put forward an entirely novel proposal: the original United States plan for collective trusteeship. The United States could not have been colder than she was towards her own patent solution. At last, she saw wisdom in granting the trusteeship over Cyrenaica to Great Britain and she felt more sympathetic to the idea of Italian trusteeship over former Italian Somaliland. Great Britain and France disagreed with each other, with the United States and with the Soviet Union. Anglo-Saxon discord arose over Eritrea. France claimed Fezzan and opposed British trusteeship in Cyrenaica. The date line had been reached. Having failed to reach agreement, the victors turned over this legacy of the war to the United Nations.⁶

Allied failure in this field and the reappearance of defeated Italy as a potential trustee over her own former colonies were due to a variety of reasons.

The only one among the Big Four who, at least in the beginning, meant what she said, was the United States. Yet when relations with the Soviet Union deteriorated, she became as much resolved as the two other Western powers not to give the Soviet Union a foothold in Africa. The Italian vote in the United States, too, was a consideration which may have contributed to the change in the attitude of the United States.

The prime reason for the Soviet Union's desire to participate in at least one of these experiments in trusteeship was probably prestige. Like others before her, she felt that, in order to be fully recognised as a world power and standard bearer of civilisation, it was necessary to exercise guardianship over at least one less 'advanced' people:

⁶ See below, p. 371 *et seq.*

outside her own traditional orbit. Furthermore, the tenacity with which Mr. Bevin clung to Cyrenaica, was a temptation in itself to foil British ambitions. In any event, Soviet sponsorship of Italian interests could only improve the election chances of the Italian Communists.

The British attitude was certainly determined by strategic considerations. With the British position in Palestine going from bad to worse, and Britain's loss of grip on Egypt, Mr. Bevin rightly felt that he had a lot to make up to the British Empire. Although it may appear to be the limit of hypocrisy to anyone outside the United Kingdom to make this point, the British Foreign Secretary had also to bear in mind public opinion at home and public British wartime promises to the Senussi, some of the worst victims of Fascist colonial policy.⁷ Yet the overriding consideration was that Great Britain was in danger of losing her hold over the Eastern Mediterranean. The former Italian colonies flank this area. From the point of view of Empire strategy, they must be either in British hands or in those of friendly powers.

The French attitude was determined by a variety of motives. France desired to establish friendly relations with post-war Italy. Public opinion in France could not forget Syria and the Lebanon. In the French view, the Anglo-Saxon powers had sacrificed French interests in the Eastern Mediterranean in order to keep the goodwill of the Arab world. When the position of Great Britain in this area became insecure, it was not for France to help Mr. Bevin out of his self-created difficulties. Finally, France was worried over the spread of Arab nationalism in North Africa. This movement threatened her own position in the adjoining French possessions. Thus, growing British concern for the Emir of Cyrenaica and the self-government of the Senussi made the French only still more nervous.

Yet in the end, the Western powers realised that they had one overriding object in common: to keep the Soviets out of the former Italian colonies in Africa. The last part of the long drawn out story of how to dispose of conquered territories in an age of non-annexation will best be related in connection with the other efforts of the United Nations to discharge their self-imposed duties of international trusteeship.⁸

THE BLACK SEA STRAITS

Expansion of Russia towards the Black Sea Straits is as constant a Russian theme as the frustration of this policy is a permanent feature of British foreign policy.

⁷ See above, p. 408.

⁸ See below, p. 680 et seq.

The Soviets took up traditional Russian policy when, a few months after the conclusion of the Montreux Convention of 1936, they proposed to Turkey the conclusion of a treaty for the joint defence of the Straits. Turkey was not, however, interested in the proposal. In May, 1939, a joint Anglo-Turkish Declaration was published, promising mutual aid in the case of aggression leading to war in the Mediterranean. Soviet comment limited itself to the statement that this had brought about a basic change in the general situation. What this meant became clear from the subsequent negotiations between Germany and the Soviet Union between 1939 and 1941.

After the Soviets had joined the United Nations, they kept reminding their Western allies of the dissatisfaction which they felt over the Montreux Convention of 1936. War requirements provided a good reason for the Soviet leaders to press on their Western allies the need for the grant by Turkey to the United Nations of military, naval and air bases in the Straits.

Under the Anglo-Turkish Treaty of Mutual Assistance of October 19, 1939, Great Britain was fully entitled to make such a demand. As emerges from the *Hopkins Papers* (vol. 2, 1949), in 1943 Mr. Churchill was quite prepared to use the Russian threat as a means of bringing Turkey into the war on the Allied side: 'If they were recalcitrant, he would not hesitate to tell the Turks that in the event of their remaining out he could not undertake to control the Russians regarding the Dardanelles.' The Anglo-Saxon powers did not, however, press Turkey unduly hard. At Teheran, Roosevelt admitted to Stalin that if he were in the place of the Turkish President, he would demand so heavy a price for Turkey's entry into the war that this would result in the indefinite postponement of the establishment of the 'Second' Front.

Mr. Churchill realised that if more far-reaching demands of the Soviet Union against Turkey were to be forestalled, it was necessary to accommodate real Soviet grievances about complete freedom of exit from, and entry to, the Black Sea both for the Soviet navy and merchant fleet. At Teheran and again at Potsdam, therefore, he declared himself willing to support Soviet demands for a revision of the Montreux Convention. The need for clarifying the issue became all the more pressing when in March, 1945, the Soviet Union denounced the Soviet-Turkish Treaty of Friendship and Neutrality of December 17, 1925 and, in June, 1945, made three sweeping demands as the basis of negotiations for a new treaty. Veiled at that time, they were subsequently formulated more articulately and, in effect, amounted to the joint defence of the Straits by Turkey and

the Soviet Union, an international regime for the Straits, but limited to the Black Sea powers, and Soviet claims to the Turkish provinces of Kars and Ardahan. President Truman was prepared to make concessions to Russia on the lines suggested by Mr. Churchill, but this approach to the problem left the Soviets cold. They did not want freedom of navigation through the Straits, but they demanded the control of this backdoor to the Soviet Union.

The possibility of the use of Turkey as a vantage point of attack against the Soviet Union is a natural preoccupation of Russian foreign policy. In a letter to the President of Turkey of January 31, 1941, Mr. Churchill (*The Second World War*. Vol. 3: *The Grand Alliance*, 1950) indirectly made the point of defensive Russian interests in this area: 'Nothing will more restrain Russia from aiding Germany, even indirectly, than the presence of powerful British bombing forces which could [from Turkey] attack the oilfields of Baku. Russia is dependent upon the supply from these oilfields for a very large part of her agriculture, and far-reaching famine would follow their destruction.' Had the Western powers been able to regard the Straits merely as a gateway into Russia, they might have been more sympathetic. The Straits could, however, be used equally well as a sally-port for further Russian expansion in the Mediterranean. The question of the Straits had to be seen as part of the Soviet advance to the Adriatic and to the Mediterranean. Tangier, Trieste, Salonika and the Straits were different facets of one and the same trend, prophetically forecast by Marx in his articles in the *New York Daily Tribune* of 1853. This, at least, was how matters looked when seen through the eyes of Western observers. The Soviets, not inaptly, preferred to draw parallels to the Panama Canal and wondered how the United States would react to proposals for Soviet participation in the control of this rather exclusive United States domain.

In the circumstances, the Anglo-Saxon powers were not prepared to leave matters exclusively between the Soviet Union and Turkey. In the Protocol of the Potsdam Conference, the Big Three merely registered their conviction that 'failing to meet present-day conditions', the Montreux Convention required to be revised. As the next step, the matter was to be made the subject of direct conversations between 'each of the three Governments and the Turkish Government'.

In these negotiations, the United States and Great Britain were willing to agree that the Straits should be open to the men-of-war of the Black Sea powers and closed to those of other nations. The Soviet leaders, however, continued their policy of pressure, supported

by a violent radio campaign and threatening troop movements, against the Turkish Government and, towards the end of 1946, renewed their demands for bases in the Straits. Turkey was forced into a state of semi-permanent mobilisation, with disastrous effects on Turkish economy. Both Great Britain and the United States granted financial help, but, by the beginning of 1947, Great Britain could no longer afford such assistance. Then the United States took over this responsibility, and Turkey came under the protecting shield of the Truman Doctrine.

President Truman's Message to Congress on March 12, 1947 did not refer explicitly to the Black Sea Straits. The President of the United States admitted that no particular status quo as such was sacred, but expressed his belief that 'it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressure'. Greece and Turkey were singled out as the two countries which, then, were in an especially critical situation, the one threatened from within and the other from without.

The President asked for special authorisation to provide financial assistance to these countries and to send United States civilian and military personnel to Greece and Turkey. Congress made the necessary appropriations. On July 8 and 12, 1947, the United States concluded special agreements with Greece and Turkey, in order to enable both countries to modernise their armies with United States equipment and under American guidance. Appropriate courtesy visits by units of the United States Fleet underlined that the United States had taken up her guard on the Black Sea Straits. In President Truman's words, the maintenance of Turkey's integrity was 'essential to the preservation of order in the Middle East'.⁹

Put in less diplomatic language, control of Greece and Turkey by the Western powers was essential to maintain their hold over the Eastern Mediterranean and over the oil resources of the Near East. This was the real issue. The Western powers feared that any grant of bases to the Soviets in the Straits would only be the thin end of the wedge which the Soviets intended to drive into the integrity of Turkey, and this they were not prepared to tolerate. Yet both sides preferred to argue the issue on the narrower grounds, and on the rather unreal basis, of a revision of the Montreux Convention.

PERSIA

During the War, Great Britain had taken good care to put on a clear treaty basis the obligation of the Allies to withdraw their troops from

⁹ See below, p. 519 *et seq.*

Persia within six months after the cessation of hostilities with Germany and her associates.¹⁰ At Teheran, the Big Three re-affirmed 'their desire for the maintenance of the independence, sovereignty and territorial integrity of Iran' (Declaration regarding Iran, December 1, 1943). At Yalta, however, M. Molotov proved to be difficult about issuing any *communiqué* on Persia. The Report of the Crimea Conference remained silent on this point. In the Protocol, it was merely recorded that the three Foreign Ministers had 'exchanged views' on the subject, and that the matter 'should be pursued through the diplomatic channel'.

After the unconditional surrender of the German forces in May, 1945, the Persian Government requested the Big Three to arrange for an early withdrawal of their forces in Persia. The Soviet Union, however, argued that the operative date was the defeat of Japan. In strict law, even before the entry of the Soviet Union into the war against Japan, she was entitled to take up this position; for Article 5 of the tripartite Treaty of Alliance between Persia, the Soviet Union and the United Kingdom of January 29, 1942 defined as associates of Germany 'all other powers which have engaged or may in future engage in hostilities against either of the Allied Powers'. Thus, the six months' limit had to be reckoned from September 2, 1945, the date of Japan's unconditional surrender.

At the Potsdam Conference, it was agreed that Allied troops should be withdrawn immediately from Teheran, and that further stages of the withdrawal of troops from Persia should be considered at the meeting of the Council of Foreign Ministers in September, 1945.

In an exchange of letters between Mr. Bevin and M. Molotov of September 19 and 20, 1945, both agreed that British and Soviet troops would be withdrawn from Persia by March 2, 1946 at the latest. United States forces were withdrawn by January 1, and the British troops completed their withdrawal by the stipulated date. Soviet troops, however, continued to stay.

In one of his letters to Mr. Bevin, M. Molotov had expressly affirmed that 'the Soviet Government attach exceptional importance to the strict fulfilment of obligations undertaken'. Thus, the issue had become one of principle. Unequivocal treaty obligations, authentically interpreted by the two Foreign Ministers, were at stake. Could the Soviet Union be relied on to fulfil solemn pledges which

- she had undertaken in black and white? In this case, the answer was definitely in the negative. Soviet troops were not withdrawn until Persia had made a formal complaint to the Security Council,

¹⁰ See above, p. 318.

and prolonged direct negotiations had taken place between Persia and the Soviet Union.¹¹ It was some consolation to the Soviets that their breach of treaty obligations had at least secured to them valuable oil concessions in North Persia and a temporary consolidation of the regime of their protégés in Azerbaijan. Yet on the main issue, they had to give way. In the end, they found, too, that the Persian Parliament refused to confirm the Soviet oil deal.

Again the Soviet Union had to learn that the Anglo-Saxon powers would rather fight than give way over an area in the strategic position of Persia. In 1947, a United States Military Mission came to assist Persia in 'enhancing the efficiency' of her army. In the following year, Persia received a substantial United States credit for the purchase of arms in the United States. Thus, pragmatically, it was brought home to the Soviet Union that Persia, Turkey and Greece were in the privileged category of 'inexpensables'. That it was necessary to teach the Soviet Union this lesson proves what a long way the erstwhile anti-imperialists had travelled.

Forgotten were those parts of the Treaty of Friendship between the Soviet Union and Persia of February 26, 1921, which abounded with denunciations of the 'cupidity and the tyranny of European robbers', and contained an unqualified assurance by the Soviet Union that she had 'abandoned unconditionally' such a 'colonial and capitalist policy'. The Soviet leaders had negotiated with Hitler for the recognition of Persia as the 'centre of the aspirations of the Soviet Union' (November 25, 1940), and Persia's oil meant more to them than the pledges freely given to their Allies.

OUTER MONGOLIA

In the Agreement of February 11, 1945 concerning the Entry of the Soviet Union into the War against Japan, which was negotiated during the Crimea Conference between Marshal Stalin and President Roosevelt and signed in the end by Mr. Churchill, too, it was stipulated that 'the status quo in Outer Mongolia (The Mongolian People's Republic) shall be preserved'. This apparently straightforward sentence covered a highly controversial and intricate tangle of political and legal problems. It all depended on what the status quo in this area actually was.

Under the Manchu dynasty, it was arguable whether Outer Mongolia ever formed part of China proper. In any case, some of the Western powers had recognised Chinese claims to sovereignty over this area. After the Chinese revolution of 1911, when the

¹¹ See below, p. 480.

princes of Outer Mongolia declared their independence from China, this region came increasingly under Russian control. Nominally, Outer Mongolia remained under Chinese suzerainty, but in fact China and Russia exercised an uneasy joint protectorate over this territory.

As far back as the first phase of the Bolshevik Revolution, the Baltic adventurer Baron von Ungern-Sternberg and his White Russian-Mongol hordes taught the Soviets how vulnerable Asiatic Russia was to invasion from Outer Mongolia. From then onwards, the Soviet Union consistently attempted to transform Outer Mongolia into a Soviet Republic in all but name. This did not prevent the Soviets from recognising that Mongolia constituted an 'integral part of the Republic of China', and that the Soviet Union respected 'China's sovereignty' therein (Article 5 of the Sino-Soviet Agreement of May 31, 1924). Following a series of border incidents on the Mongolian-Manchurian frontier, Soviet Russia served warning by a 'gentlemen's agreement' with Outer Mongolia of 1934 of her determination to defend the Republic against Japanese encroachments. The Protocol of Mutual Assistance of March 12, 1936 formalised relations through a defensive alliance. China duly protested against this infringement of her sovereign rights, but was not in a position to defend Outer Mongolia either against the Soviet Union or against Japan.

In the Agreement reached at the Crimea Conference, the Big Three recognised that the understanding regarding Outer Mongolia required the concurrence of General Chiang Kai-shek. Details were worked out during a prolonged Sino-Soviet Conference held in Moscow in July and August, 1945. A basic difference of opinion between the two sides on the meaning of the Crimea Agreement on Outer Mongolia soon became evident.

In the Chinese view, the sentence in dispute meant a confirmation of Chinese *de jure* sovereignty over Outer Mongolia and of the *de facto* dependence of Outer Mongolia on, and close association with, the Soviet Union. Marshal Stalin, however, pointed to the inclusion of the words in brackets (Mongolian People's Republic) and deduced from this description the astounding thesis that it entitled him to demand the complete separation of Outer Mongolia from China. All the Chinese could do was to perform one of their traditional acts of face-saving. In an exchange of notes, which was to become binding on ratification of the Sino-Soviet Treaty of Friendship and Alliance of August 14, 1945, the Chinese Government promised, subject to a plebiscite to be held after the defeat of Japan, to recognise the independence of Outer Mongolia. In exchange, the Soviet Government

guaranteed that it would respect the 'political independence and territorial integrity' of Outer Mongolia.

On October 20, 1945, the plebiscite was duly held. Over 98 per cent of the eligible voters took part, and all of them voted for Outer Mongolia's independence. Voting procedure was simple and effective. According to *Pravda* (November 22, 1945), the voters had to put their 'yes' or 'no' on the electoral list and to sign their verdict. In case of illiteracy, a fingerprint served as a substitute.

China accepted the inevitable and, on February 13, 1946, established diplomatic relations with this new 'independent' State. Then came the finishing touch to the work of patient 'co-ordination' which the Soviet Union had carried on over a generation. On February 27, 1946, Treaties of Friendship and Mutual Assistance and of Economic and Cultural Collaboration were signed in Moscow between the Soviet Union and the Mongolian People's Republic.

KOREA

During Mr. Eden's visit to Washington in March, 1943, the future of Korea was discussed for the first time on an inter-Allied level. Again, it was one of those issues where strategy, principle, ideology, and sentiment were inseparably mixed.

For centuries, Korea had been a Chinese tributary State. In 1895, as a result of the Sino-Japanese War, China had to recognise Korean independence. The question then arose whether this would mean Russian or Japanese domination of Korea. It was answered by the outcome of the Russo-Japanese War. With the United States and Great Britain adopting policies of benevolent detachment, Japan established a protectorate over Korea.

In every respect, Japanese action in Korea foreshadowed Hitler's assumption in 1939 of the German protectorates over Bohemia and Moravia. The Japanese Declaration of November 22, 1905 even anticipated the ideology of Hitler's 'new order'. The Japanese set out 'to safeguard their own position and to promote the well-being of the Government and the people of Korea'. Like their Hitlerite disciples, they fulfilled to the letter the first part of their programme. The complementary part consisted in policies of wholesale terror, oppression and denationalisation. In 1910, this process was completed by the Japanese annexation of Korea. With a peculiar sense of humour the Japanese insisted on a Treaty of Annexation. This was concluded between the Japanese Resident-General and the Minister-President of Korea.

Some of the leaders of the Korean emigrants in the United States gained the ear of President Wilson. As, however, Japan was one

of the Allied Powers of the First World War, Korea had to submit to its fate until Japan became one of the enemies of the United Nations. Then, the 'enslavement of the people of Korea' was remembered. In the Cairo Declaration of December 1, 1943, issued on behalf of President Roosevelt, Mr. Churchill and General Chiang Kai-shek, it was announced that 'in due course' Korea should become free and independent. The meaning of this phrase was interpreted by the powers in the light of another aspect of the Korean problem: its place in Far Eastern strategy.

Since the sixteenth century, when China had been invaded by Japan through Korea and, since the last decades of the nineteenth century, Korea had been the springboard for Japanese infiltration into the Asiatic mainland. With equal ease, Korea can be used as a forward base for the invasion of Japan. Furthermore, the Peninsula is within striking distance of Port Arthur and Vladivostok, the outposts of Russian imperialism in the Pacific. Finally, Korea has rich deposits of coal, iron and other minerals and, during Japanese rule, Northern Korea had become largely industrialised.

In his conversations with Hopkins in May, 1945, Marshal Stalin agreed to a Four-Power trusteeship for Korea, to be exercised by China, Great Britain, the Soviet Union and the United States. In the Potsdam Declaration to the Japanese People of July 26, 1945, Marshal Stalin associated himself with the Cairo Declaration of 1943. It was also during the Potsdam Conference that the 38th Parallel made its first appearance since 1896. Then, it had been suggested by the Japanese to Russia in their abortive negotiations for a division of Korea. At Potsdam, or perhaps already at Yalta, the military staffs contemplated a rough and ready demarcation line between Soviet and United States forces which were to occupy Korea from the north and south. The improvised line of demarcation was destined to become an impassable barrier between the northern and southern halves of the country and one of the *de facto* frontiers between the Eastern and Western worlds.

Surface agreement was reached at the Moscow Conference of December, 1945. In substance, it was a complete Soviet victory. Nothing was said about the 38th Parallel. The United States did not insist on elections being held in the immediate future but, rather inconsistently, agreed to the general Soviet pattern of establishing without further delay a 'provisional Korean democratic government'. In order to assist in its formation, and 'with a view to the preliminary elaboration of the appropriate measures', a joint Soviet-United States Commission was to be formed. In preparing its proposals, it was to consult the 'Korean democratic parties and social

organisations'. Prior to final decision by the Soviet Union and the United States, the Commission's recommendations were to be presented to the Four Powers for consideration. The Joint Commission was also to work out proposals for the trusteeship regime in consultation with the provisional Government of Korea and the Korean democratic organisations and to submit them to the Four Powers. These were then to agree on the terms of a Four-Power trusteeship for a period of up to five years.

This Joint Commission was the most farcical of all the attempts at co-operation between East and West. During 'two years of bickering and dispute' (Mr. John Foster Dulles in the General Assembly of the United Nations—November 13, 1947), the Commission found it impossible even to agree on the proper definition of the word 'democratic' in the Moscow Resolution. Thus, it was never able to commence its task of consultation with representatives of the Korean people. The economic life of Korea was thoroughly disrupted. Separate governments, duly elected by the people in each zone, were established by the occupation powers. The one showed indubitable leanings to the left and the other equally pronounced tendencies to the right.

The United States repeatedly tried to solve the deadlock by direct negotiations with Moscow, but without success. The division of Korea suited the Soviet leaders. The Communists in Southern Korea and the delays in carrying out long overdue land reforms there gave Russia a potential lever in Southern Korea whenever this should be opportune. In 1947, Mr. Marshall attempted a new approach: a Four-Power conference on the future of Korea. China and Great Britain agreed to the proposal, but the Soviets were not interested. As they put it, they preferred to adhere strictly to the decisions taken at the Moscow Conference of 1945. Then, the United States lost its sorely tried patience and decided to submit the whole issue to the United Nations.

The breakdown of Japan had created on the Asiatic mainland a power vacuum in the Far East which corresponded to that caused by the annihilation of Hitlerite Germany in Europe. The 38th Parallel, like the zonal frontiers in Germany, Austria and Trieste, is the outward symbol of the mechanical way in which the vacuum was filled. Incapable of settling the question of Korea constructively, the victors had only the choice between prolonging indefinitely the arbitrary division of Korea, of giving way to each other's pressure or of burdening the United Nations with yet another of their unsolved problems.¹² Korea had ceased to be the 'Land of Morning Calm'.

¹² See below, pp. 420 and 515 *et seq.*

FORMOSA

In accordance with the Cairo Declaration of 1943, and following Japan's unconditional surrender in 1945, Formosa was occupied by Chinese forces. The Joint *Communiqué*, which was issued at the Cairo Conference (December 1, 1943), referred to Formosa as one of the territories which Japan had 'stolen from the Chinese', and which were to be restored to China.

China had ceded Formosa to Japan as long ago as 1895. In this case, therefore, it cannot be argued that Japan had reaped these fruits of aggression in contravention of any of the subsequent treaties by which aggressive war was outlawed, and that, therefore, Japan's tainted title can be ignored. Thus, in principle, the Chinese occupation and the transfer of territorial sovereignty depended on cession, presumably in a peace treaty. Japan, however, surrendered unconditionally to her enemies, and these were free to substitute their own consent to such a cession for that of Japan. The only legal problem is whether they have expressed any such intention. The evidence is not conclusive.

Mr. Acheson held that Formosa had become Chinese territory (*The Times*, January 6, 1950). This was, however, before the United Kingdom had recognised de jure the Chinese Communist Government in Peking. After this crucial date, the British Foreign Office expressed the opinion that Formosa was still de jure Japanese territory (Supreme Court of Hong Kong, *Civil Air Transport Inc. v. Chennault and Others*, 1950). In the absence of any articulate formulation of Allied intentions on the occasion of the occupation of Formosa by the Chinese nationalist forces and in view of the establishment—and recognition—of an independent State in Southern Korea, it is hard to distinguish between the two cases. If, without any peace treaty, the severance of Korea from Japan was final, then presumably the same applies to Formosa.¹³

The legal uncertainties regarding the status of Formosa are, however, merely symptomatic of a more important issue. Since China has become Communist, Formosa has been incorporated into the frontier zone between East and West. To accept the position taken by the United States on Formosa would be for the Government in the United Kingdom to recognise the legality of any Communist Chinese intervention in Formosa. To subscribe to the British view that Formosa was still Japanese territory would imply that the United States would have to treat automatically any Chinese Communist attack on Formosa as an act of aggression against Japan. It would

¹³ See above, p. 419, and below, p. 423.

further involve the admission that the Chiang Kai-shek government—for the United States the *de jure* Government of China—did no longer hold any Chinese territory. Thus, the leading Western powers use their discretion in matters of recognition¹⁴ to suit their diverging policies towards Red China.

JAPAN

As with Germany, truncation was part of the Allied peace programme for Japan. At the Cairo Conference of 1943, it was agreed that Japan should be deprived of all the fruits of her acts of aggression against China, and be reduced to the status quo of 1895: 'All the territories that Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China.' It was further announced that Japan would also be expelled from the islands in the Pacific which the victors in the First World War and the League of Nations had bestowed on her as mandates, and 'from all other territories which she has taken by violence and greed'.

The last-mentioned passage provided a suitable gambit in the game of tempting the Soviet Union into the war against Japan. At Teheran, Mr. Churchill and President Roosevelt elaborated the theme. Mr. Churchill dwelt on the Soviet Union's need for warm-water ports and expressed his hope to see in future the Soviet navy and merchant fleet on all the world's oceans. Marshal Stalin amicably remarked that the British had not felt this way in Lord Curzon's days. President Roosevelt then suggested that Dairen be transformed into a free port under international guarantee in order to give Russia access to this important port. Marshal Stalin virtuously wondered whether General Chiang Kai-shek would not object to so far-reaching a scheme. President Roosevelt thought this could be arranged. Thus, Marshal Stalin had received all the cues he needed.

At the Crimea Conference, he presented his list. Free port facilities at Dairen were a relatively unimportant item in a bill which amounted to the full restoration of the status quo of 1904: the return to the Soviet Union of Sakhalin and of all the islands adjacent to it, recognition of the predominant interests of the Soviet Union in the internationalised port of Dairen, restoration of Port Arthur as a Soviet naval base, and the establishment of a joint Soviet-Chinese Company for the operation of the Chinese Eastern and South-Manchurian Railways. The 'pre-eminent interests' of the Soviet Union in the Company were to be safeguarded, but the Soviet Union was willing to recognise Chinese sovereignty over Manchuria.

¹⁴ See above, p. 102.

In short, irrespective of whether Czarist imperialism had expanded at the expense of countries which were allies or enemies in the Second World War, the former position was to be re-established. Finally, Marshal Stalin asked for the Kurile Islands into the bargain. Russia had ceded these to Japan in 1875 when Russia was in a position of strength in the Far East. The two powers then agreed to exchange their *condominium* over Sakhalin and the Kurile Islands for the exclusive control of Japan over the Kurile Islands and of Russia over Sakhalin.

Marshal Stalin gained all his points. President Roosevelt undertook to obtain General Chiang Kai-shek's approval. Yet irrespective of this, President Roosevelt and Mr. Churchill had to agree that 'these claims of the Soviet Union shall be unquestionably fulfilled after Japan has been defeated'. On these conditions—over and above the concession won from the West regarding Outer Mongolia—the Soviet Union promised to enter the war against Japan two or three months after the termination of the war in Europe. After Japan's unconditional surrender, Soviet forces took possession of their spoils of war, and Formosa was returned to Chinese rule.

It is questionable whether, in law, the final transfer of these territories depends on a formal cession by Japan in a peace treaty. The Potsdam Declaration referred explicitly to the Cairo Declaration and, in the Japanese Instrument of Surrender of September 2, 1945, the Japanese plenipotentiaries undertook 'for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith, and to issue whatever orders and to take whatever action may be required by the Supreme Commander for the Allied Powers or by any other designated representative of the Allied Powers for the purpose of giving effect to that Declaration'. When the United Nations disposed of the former Japanese mandate in the Pacific Islands, they acted on the assumption that it was not necessary to wait for a peace treaty with Japan. The Soviet member of the Security Council knew what he was doing when, against Australian and British opposition, he supported the United States in securing for herself these strategic areas in the Pacific under the name of trust territories.¹⁵ What was good enough in the case of the United States could not well be contested in the case of the Soviet Union.

Nevertheless, there are essential differences. The Pacific Mandates of Japan were never Japanese territories. Furthermore, the Kurile Islands are not even covered by the Cairo Declaration. Yet their *de facto* transfer is as definitive as anything can be in a rather

¹⁵ See below, p. 660 *et seq.*

unstable world. Whether it will be confirmed by a peace treaty will burden the Soviet leaders as little as the principle laid down in the Cairo Declaration—accepted by the Soviet Union at Potsdam and taken over from the Atlantic Charter—that the victors ‘covet no gain for themselves, and have no thought of territorial expansion’.

Again it remains to be seen whether the Allies will muster sufficient unity to conclude a joint peace treaty with Japan. The *impasse* reached between the victors cannot be illustrated more strikingly than by the lecture given to their masters in a leading article, published in *Asahi* (November 8, 1949). Little more than four years after Japan’s unconditional surrender, Japanese politicians are deploring—with all the appearances of deep-felt sorrow—the growing rift between the former Allies. With mock virtue they declare that ‘for Japan there can be only one peace—that of which all the belligerents approve’. Yet when it serves their purposes, they are not above asserting that ‘a separate peace with the United States and Britain already exists. That peace is only *de facto*, but it does exist, and nothing more is required than a legal expression of its existence’ (Statement by Prime Minister Yoshida, May 8, 1950).

POST-1945 REALITIES

Compared with the great peace settlements since 1648, the attempts at peace-making made since 1945 fall far short of past standards, both by their untidiness and by the multitude of major issues left open. The statesmen of 1919 have been charged with having concentrated unduly on the establishment of a rigid status quo. This reproach can certainly not be levelled against their successors after the Second World War. They did not wish to burden the new peace organisation with the task of laying the foundations of a new international post-war order.¹⁸ Yet they failed to do so themselves and, in several instances, they fell back on the device of transferring unsolved problems to the United Nations. For the rest, they succeeded in dividing the world into two *blobs* which face each other across new, and completely irrational, *de facto* frontiers.

Seen from the West, the fault lies primarily with the Soviet Union and her limitless ambitions. Unless she is faced with open war, the Soviet Union presses every opportunity of open expansion or of conquest of countries from within. The Soviet Union gave way on Turkey and Persia because she was not prepared to force expansion at the risk of war. The Soviet Union did not force the issue in Greece, as the Greek Communists would have required large-scale assistance from outside to match the armed forces of the Greek

¹⁸ See above, p. 343.

Government and the assistance given to it by Great Britain and the United States. Yet in Czechoslovakia and China conquest from within was a complete success.

By the overthrow of the political, military and social balance within each of these countries, these two States have been drawn into the exclusive orbit of the Soviet Union. The Soviets have found the secret of the mobile world frontier which constantly and consistently moves westward. This development must be stopped, peacefully or otherwise. The alternative is ultimate attrition of the West by a movement which gradually envelops the free world from the Far East and, if unchecked, may expand *via* the area of the Indian Ocean to the Middle and Near East.

Looked at from Moscow, this world picture is clear evidence of a rampant claustrophobia, if not of persecution mania. A Soviet spokesman might well analyse the position as follows :

‘ Considering the attitude taken by the former Allies in the early years of the Bolshevik Revolution and during the Appeasement Period, the Soviet Union has every right to provide at last for her own security. The fact that, at Potsdam and after, the Western powers have glowed with their temporary monopoly of the atomic bomb, makes it evident that they have unfriendly mental reservations towards their Eastern Ally. Their attitude towards Franco Spain, authoritarian regimes anywhere in the Western world and former “fascists” in Germany, Austria, Japan and Korea indicates the likelihood of a new crusade of all anti-Communist forces against the Soviet Union.’

He might continue in this vein :

‘ The sympathy of the Kremlin, and of the Cominform, towards Communism in the West is as natural as was the solidarity between Queen Elizabeth or Cromwell and Protestants on the Continent or of all Christian States against the persecution of Christians in the Ottoman Empire. The action taken by Communists in Czechoslovakia shows that, at last, the militant section of the working class has learned how to deal effectively with their class enemies. In China the Soviet Union has intervened very much less than the United States which prodigiously supplied the Chiang Kai-shek regime with loans, arms and military advisers. The nationalist Government of China broke down because it had failed to carry out land reform on more than a nominal scale and because it was riddled with inefficiency and corruption.’

He might end his discourse on a note of impending doom :

‘ If the West feels threatened, it is because social revolution is inexorably on the march. Being incapable of dealing constructively with these social and economic problems, the Western world must face the consequences of its own self-contradictions. They are not Soviet-made, but are inherent in any capitalist system. Instead of

to the Conference only the United Nations qualifying as such by February 8, 1945 and those of the Associated Nations who would declare war on Germany by March 1, 1945. Compared, however, with the position of members other than the Principal Allied and Associated Powers in the Commission on the League of Nations, the members of the San Francisco Conference were given much greater latitude. In 1919, the Principal Allied and Associated Powers had a majority on this Commission. In practice, controversial issues were not settled by vote, but by a general consensus in which the views of the chief Allies prevailed. The Plenary Sessions of the Peace Conference in which the Covenant was approved were of a merely formal character. The States which were not members of the Commission had to accept the draft Covenant as it stood.

At San Francisco, every aspect of the Charter was thoroughly discussed in the Technical Committees and accepted with two-thirds majorities before the final text was unanimously adopted at the Plenary Session. Nevertheless, the middle powers and small States represented at San Francisco knew when the end of reasoning was reached. Vital amendments were not pressed against the united front of the four Sponsoring Powers. Thus, the issue of the veto of the world powers was for all practical purposes closed when the United States member of Committee III/1 declared that the Sponsoring Powers 'had gone as far as they could go with respect to the voting procedure in the Security Council. He asked if delegates could face public opinion at home if they reported that they had killed the veto but had also killed the Charter' (June 12, 1945—11 UNCIO, p. 493).

In 1919, it had been decided to link the League of Nations closely with the peace settlements. This tendency found its outward expression in the inclusion of the Covenant in each of the Peace Treaties. In 1945, it was thought wiser to separate completely the tasks of peace-making and of establishing the new world organisation.²

OBJECTS

The prime object of the founders of the League of Nations and of the United Nations alike was to free the world from the fear of another major war. The other objects of both organisations were conceived as being merely auxiliary to this main purpose.

In the Covenant of the League of Nations this hierarchy was not very clearly expressed. At the meeting of the Plenary Peace Conference of January 25, 1919, it was resolved that the tasks of the

² See above, p. 343.

League of Nations should be to 'promote international co-operation, to ensure the fulfilment of accepted international obligations, and to provide safeguards against war'. In the Preamble of the Covenant it was stated that the signatories to the Peace Treaties agreed to the Covenant 'in order to promote international co-operation and to achieve international peace and security'. The Preamble to the Labour Section of the Peace Treaties, however, simply stated: 'The League of Nations has for its object the establishment of universal peace'. Yet while the work of the Peace Conference proceeded, the League of Nations was increasingly burdened with additional functions. In the end, the chief argument for the League's existence had been rather obscured or, as Lansing thought (*Peace Negotiations*, 1921), had become almost lost to sight.

The Dumbarton Oaks Proposals were formulated in an air of studied realism and of business-like unsentimentality. Thus, the Preamble was reduced to a merely formal introduction, and the purposes of the United Nations were incorporated into the text of the Charter. According to the British Commentary on this preliminary document (Cmd. 6571—1944), the reason was to give greater importance to these objectives than they might be considered to have if they were merely stated in the preamble.

Article 1 of the Dumbarton Oaks Proposals and of the final text of the Charter make the maintenance of international peace and security the first task of the United Nations. 'Universal peace' is used as a synonym in the following paragraph of the same article. The other objectives are 'a necessary concomitant' (British Commentary on the Dumbarton Oaks Proposals). These subsidiary tasks are of a preventive character. The development of friendly relations among nations was to be one of the 'appropriate measures to strengthen universal peace'. Differing from the Covenant, peace was no longer conceived as being primarily a political problem. It was to be buttressed by international co-operation in economic, social, cultural and humanitarian questions, and by respect for human rights and fundamental freedoms. Lastly, the United Nations was to be a centre of co-ordination for the achievement of these purposes.

On the insistence primarily of General Smuts, these objectives were repeated in a language with wider popular appeal in the Preamble which was drafted at San Francisco. In the words of the Rapporteur of Sub-Committee I/1/A, the committee charged with drafting the Preamble intended to 'give the Preamble a language and tone which leads its way to the hearts of men. The Preamble should introduce the Charter, and by so doing should have the harmony in ideas and words, and the light, which can awaken the

imagination of the common man to the points at issue, kindle his feelings, and move him'.

In the Preamble, the chief objective of the United Nations was redefined as consisting in saving 'succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind'. Similarly, the other objects of the United Nations were reformulated—to use the inimitable language of the same Report—so that, in these respects, too, the Preamble should 'respond to the urge of the literary sense for harmony, rhythm, and appealing moral beauty, and . . . meet, at the same time, the requirements of the demand for juridical precision and logical sequence'.

UNIVERSALITY

Universality *in vacuo* is meaningless. In order to understand the implications of universal and non-universal membership of an international organisation, it is necessary to relate the scope of membership to other criteria, which give colour to what, otherwise, remains a phantom.

In the past, the following have proved to be important: the structure both of the international organisation and of the individual member States, the significance of member States for the fulfilment of the tasks entrusted to the organisation, and their willingness to carry out their collective obligations.

It then emerges that founders of an international organisation have at their disposal a number of patterns from which to select the type of universal organisation which best suits their particular purposes. There are at least four pairs of types of universality. Understood as pure types, each pair contains mutually exclusive alternatives; every one of them, however, can be combined with either alternative of any other pair.

A simple table may assist in a synoptic view of the most important types of universality:

<i>Criteria</i>	<i>Types of Universality</i>	
Structure of the Organisation	Imperial	Co-operative
Structure of individual member States	Homogeneous	Heterogeneous
Significance of individual member States	Absolute	Relative
Attitude of individual member States to the Organisation	Formal	Material

Each of the two world wars made it painfully evident that, in a world society, major wars have a growing tendency to become world wars. Thus, in our time, the principle of functional universality is

inherent in any international organisation that aims at the establishment or maintenance of world peace. Both the founders of the League of Nations and of the United Nations had to accept this fact. They were only left with the choice between the various types of universality.

Imperial or Co-operative Universality? Imperial universality means a world empire which is based on coercion from above. The world State on the model of the Roman Empire is the classic example of this type of universality. For our purposes, it is irrelevant that the world States of antiquity were not universal in any objective sense, but comprised only one or some of the then actually co-existing international societies. This may have been Hitler's vision of an international peace organisation.

This pattern could not recommend itself to an alliance of States which had banded themselves together to oppose the German bid for world domination. The very existence of an international oligarchy inside the United Nations ruled out the imperial variant of universality. So long as the United States and the Soviet Union exist side by side, the dream of a universal *Pax Americana* or *Pax Sovietica* must necessarily remain unfulfilled.

The alternative to imperial universality is co-operative universality, that is to say, a collective system which is based on voluntary membership. The United Nations Declaration of 1942, subsequent pronouncements of the Big Three, and the Dumbarton Oaks Proposals took it for granted that the United Nations should be based on this principle. At the San Francisco Conference of 1945, Uruguay mooted the idea of compulsory membership of the United Nations, but found little support. The Charter, like the constitutions of all other international institutions, is based on the principle of voluntary membership of the United Nations.

Acceptance of the principle of co-operative universality raises two problems; the right of members to withdraw from the organisation and the control of non-members by the organisation.

The Covenant reserved expressly the right of withdrawal of the League members. In the drafting stage, Wilson minimised the importance of this provision. In his view, a State which would leave the League would become an international outlaw. The official British Commentary on the Covenant of 1919 was more realistic. It described the right of withdrawal as an 'important affirmation of the principle of national sovereignty'.

The Dumbarton Oaks Proposals (Cmd. 6560—1944) did not contain any corresponding clause. As was explained in the British Commentary, this omission was intentional. Unless a member was

expelled, membership of the Organisation was to be permanent. At the hearings before the Foreign Relations Committee of the United States Senate in 1945, however, it became clear that the United States Delegation had drawn the opposite conclusion from the absence of a withdrawal clause in the Dumbarton Oaks draft.

By a narrow majority, it was decided in Committee I/2 of the San Francisco Conference not to insert any express provision into the Charter on the right of members to withdraw from the Organisation. The Committee, however, added to its Report a declaration on withdrawal which was adopted by a substantial majority (38 in favour, 2 against, with 3 abstentions). It made it clear that, in exceptional circumstances, members remained free to withdraw from the Organisation. Instances were expressly mentioned, such as the contingency of the Organisation being 'unable to maintain peace' or of being able to 'do so only at the expense of law and justice', or the acceptance by the Organisation of amendments to the Charter to which any particular member took strong objection.

The Plenary Conference accepted this interpretation of the Charter. Thus, the Conference hoped both to avoid weakening the new Organisation in advance by any express provision for withdrawal and to leave States free to renounce their membership if they thought that 'exceptional circumstances' had arisen. In law, this way of proceeding was, to say the least, untidy. In terms of politics, the Declaration on Withdrawal provided a sufficient loophole for members in case of need to contract out of their obligations under the Charter.

The other problem was that of the non-member State. In its Advisory Opinion on *Eastern Carelia* (1923) the Permanent Court of International Justice had reaffirmed the position under traditional international law. A sovereign State is free to ignore the existence of any international institution of which it is not a member. The constitution of such a body is a multilateral treaty and not different in kind from any other treaty. It can only bind parties to it, but does not impose obligations on third States against their will.

The League of Nations adhered in its practice to this ruling. It meant that the League could invite non-members to co-operate, but could not force them to do so or to accept any of its policies. In the course of its chequered career, the League of Nations frequently came up against this barrier to its activities, especially in the pacific settlement of international disputes, disarmament and economic co-operation.

The founders of the United Nations felt justified in adopting a bolder course. They relied on the fact that all the leading powers of

he world would be members of the United Nations. The Organisation was charged with the duty of ensuring that, so far as might be necessary for the maintenance of international peace and security, non-members would comply with the principles of Article 2 of the Charter.

If non-member States are co-operative, no difficulty arises. The consent of the non-member State heals the defect of any action that, otherwise, might be challenged on the ground of excess of jurisdiction on the part of organs of the United Nations. Thus, in the dispute between Albania and Great Britain over the Corfu Channel incidents of 1946, Albania chose to appear before the Security Council in accordance with Article 32 of the Charter. In the end, she even accepted the jurisdiction of the International Court of Justice for the settlement of the conflict. Difficulties only arose at a later stage when Albania refused to pay the damages awarded to the United Kingdom.

The position was more difficult when, in 1946, Greece complained to the Security Council against the assistance granted to the Greek rebels by her neighbours. The United Nations was not in a position to exercise effective pressure on Albania and Bulgaria, the two non-member States concerned. The fact that neither of these States were members was not, however, the vital point. As long as Yugoslavia belonged to the Soviet camp, her behaviour did not differ in any way from that of Albania and Bulgaria. The real difficulty was that all three countries defied the United Nations in concert with one of the permanent members of the Security Council. Thus, in this case, the assumption on which Paragraph 6 of Article 2 of the Charter was based, had broken down : one of the leading members of the United Nations did not exercise its influence in the interests of the collective system. If the Soviet Union had not instigated the action of Greece's neighbours, she certainly did nothing to restrain any of these small States.³ Matters only improved when Yugoslavia strayed out of the Soviet fold, and the Greek army attained supremacy in the field against the Communist guerilla forces.

In the case of Spain the Security Council could not agree on whether the Franco regime constituted an actual, as distinct from a potential, danger to international peace and security. Once the Security Council had divested itself of this matter, the field was free for the General Assembly to concern itself with this topic.

The Resolution of the Assembly on Spain of December 12, 1946 dealt, in part, with a domestic affair of the United Nations, that is to say, with the question of Spain's admission to international agencies and conferences associated with the United Nations. To this extent,

³ See below, p. 478.

the Assembly was free to lay down any policy it chose to adopt. It overstepped, however, the limits set by the Charter itself to the United Nations when it recommended members to withdraw the heads of their diplomatic missions from Madrid; for it was not seriously suggested that Franco Spain had endangered the maintenance of international peace and security. This part of the Resolution, therefore, was outside the scope of Paragraph 6 of Article 2 of the Charter. The action of the General Assembly was *ultra vires*. What was worse was that this gesture of a 'diplomatic sanction' was as hypocritical as it was futile. If the Resolution meant anything, it aimed at the imposition on Spain of standards of democratic government which are hardly observed in some of the original member States of the United Nations. On the initiative of a number of Latin American States, the General Assembly at its Fifth Session rescinded its earlier Resolution and, thus, put an end to this ill-conceived half-measure.

Homogeneous or Heterogeneous Universality? An international organisation with universal objects aims at homogeneous universality if it is restricted to States of similar political or social structure; if it dispenses with any such tests, it is based on the principle of heterogeneous universality.

The Covenant of the League of Nations drew a distinction between original and subsequent members of the League of Nations. The former were eligible for membership without having to comply with any test regarding their internal political structure. Applicants for membership, however, had to furnish evidence of being 'self-governing' communities. The founders of the League identified this term with democratic institutions. In the practice of the League of Nations this test was speedily forgotten. Contrary to the wording and spirit of Article 1 of the Covenant, self-government was equated with independence. A League which had failed to achieve relative universality and increasingly contented itself with formal universality could not afford the luxury of examining too closely the constitutional—or any other—credentials of new members.

In the drafting stage of the Covenant the question of homogeneous universality had arisen because some of the leading statesmen in the Allied camp were convinced of the basic aggressiveness of non-democratic States and of the inherently peaceful character of democracies. In the Second World War, the United Nations attested to each other their democratic character and reserved the epithet of totalitarianism for their enemies.* To open the issue of homogeneous universality would have meant to introduce into inter-Allied discus-

* See above, p. 324 *et seq.*

sions the whole problem of political *versus* economic democracy, 'bourgeois' *versus* 'people's' democracy, or, to put it less euphemistically and more truthfully, of Western democracy *versus* Soviet totalitarianism.

In view of the contemplated participation of the Soviet Union in the future peace organisation, it was considered that the less said on this matter, the better. The common interest of wartime unity between the Allies was necessarily paramount. Yet even if the problem of Eastern 'democracy' had not existed, some of the United Nations would have presented rather a puzzle. Some of the Latin American States, Portugal, Greece, Turkey and China were democracies of a rather peculiar type.

The war leaders of the United Nations preferred to leave this issue alone, fraught as it was with material for serious dissension. By implication, they decided in favour of heterogeneous universality. The San Francisco Conference endorsed this attitude. It even ratified the promise made by the United States to Argentina at the Inter-American Conference of Mexico City that the United States would secure Argentina's membership of the United Nations, provided that Argentina became a party to the inter-American Agreements of Mexico City.⁵ In the circumstances, the Conference had no alternative but to treat the internal structure of member States as a matter which was essentially within their own domestic jurisdiction. It was, however, expressly mentioned in the Report on Membership of Committee I/2 to Commission I that, in the exercise of their discretion in admitting new members, the Security Council and the General Assembly could take into account 'considerations of all kinds'.

As it stands, Article 4 of the Charter is based on the principle of heterogeneous universality. In accordance with the majority opinion of the International Court of Justice in the Advisory Opinion concerning *Membership in the United Nations* (1948), the conditions of membership laid down in Article 4 of the Charter are exhaustive. Members of the Security Council and of the General Assembly, therefore, would act contrary to the Charter if they openly voted for, or against, a candidate on the ground of preferences of their own for the principle of homogeneous universality.

In this respect, the joint minority opinion was more realistic. It suggested that the membership qualifications of Article 4 should only be regarded as minimum conditions. This would have left members of the Security Council and of the General Assembly free openly to make their votes dependent on the fulfilment by candidates of additional qualifications for membership. In practice, however, members

⁵ See below, p. 518.

still remain their own masters on how to exercise their discretion in voting for, or against, any applicant. The only effect of the Court's majority opinion is to drive underground any movement towards homogeneous universality and to condemn it to remain inarticulate.

Absolute or Relative Universality? If an international organisation attempts to secure the inclusion of all communities, whether great or small, significant or insignificant for the achievement of its objects, it aims at absolute universality. If it is content with the membership or co-operation, willing or enforced, of all 'key' States, it is based on the principle of relative universality. Whether a State belongs in this category depends on a hypothetical test. Would the aloofness of any particular State from the collective system be likely to endanger the achievement of the common objectives?

In a world which included non-democratic communities, acceptance of the test of democratic homogeneity might have prevented the League of Nations from achieving either absolute or relative universality. The founders of the League did not expect that their choice in favour of homogeneous universality would prevent the League from attaining at least relative universality. They took it for granted that Allied intervention in Russia would lead to the ultimate establishment there of a democratic regime or, at least, of a Russian reactionary government in democratic trappings. Even when it had become apparent that the Soviet Government had come to stay, the majority of the members of the League still endorsed Lord Balfour's view (speech in the First Committee of the Second Assembly): 'I think it is extremely doubtful whether the majority of the members of the League would regard the addition of Bolshevik Russia as an improvement of the League of Nations.'

Yet, with the defection of the United States from the League and the growing consolidation of the Soviet Union, it looked increasingly as if the League were to lose even the race for relative universality. Then, the members of the League decided to scrap for all practical purposes the test of homogeneous universality and to subordinate every other consideration to the acquisition of new members. The admission of Ethiopia in 1923 heralded this basic change of attitude.

After the Japanese challenge to the League of Nations, the movement towards heterogeneous and absolute universality grew in strength. Following the precedent set in the case of Mexico (1931), the League of Nations invited Turkey (1932) and the Soviet Union (1934) to become members. The telegram, in which this invitation was extended to the Soviet Union by thirty member States, was an unequivocal affirmation of the principle of absolute universality: 'The mission of maintaining and organising peace, which is the

fundamental task of the League of Nations, demands the co-operation of all countries of the world.' The more anxious, however, the League of Nations showed itself to widen its circle of membership, the less the boon of membership was appreciated. The League of Nations shared the usual fate of any club which sacrifices exclusiveness to more pressing needs of the moment.

By including all the world powers as original members, the United Nations achieved relative universality from the outset. As will be shown subsequently, the qualifications of membership laid down in Article 4 of the Charter are not meant to be a bar to absolute, but to formal universality. As in the case of the League of Nations, the attainment of this object has not been imposed as a duty upon the United Nations or its members. They are free to determine by their vote on each individual case of admission how much importance they attach to this principle at any given time.

Formal or Material Universality? Universality is formal when it is sought for its own sake or for reasons extraneous to the purposes of a collective system. It is material if the object is to include in the international organisation the greatest possible number of States which are willing to promote effectively the objects of the organisation.

The League of Nations attempted to secure material universality by committing its members to the observance of certain standards of international conduct. In their most general form, these standards were laid down in the Preamble to the Covenant. In addition, every applicant for membership was required to 'give effective guarantees of its sincere intention to observe its international obligations'. Corresponding to the growing tendency to expand membership, this test of material universality was increasingly treated as a formality.

There was little point in stressing this provision of Article 1 of the Covenant when the League was prepared to tolerate the continued membership of flagrant Covenant-breakers such as Japan or Italy. In neither case was the machinery for expulsion under Paragraph 4 of Article 16 of the Covenant put into operation. Both Japan and Italy left the League with gestures of defiance and contempt. Contrary to Article 1 of the Covenant, their voluntary withdrawal was accepted. In accordance with the Covenant, this was only possible if these States had fulfilled all their international obligations, including those under the Covenant. Each of these aggressors had manifestly violated the Covenant and the Kellogg Pact. Yet the League debased itself not only by attesting in this indirect way to these Powers that they had acted in accordance with their inter-

national obligations, but still further by self-effacing attempts at inducing them to retain their membership. The League of Nations had become content with formal universality.

In Lord Cranborne's Memorandum on *Participation of all States in the League of Nations* of September 8, 1937, which was submitted to the League Reform Committee, attention was drawn to the meaninglessness of this type of universality: 'The question of a universal League cannot fruitfully be considered apart from the nature of the League which is to be universal.' Only when it was too late did the League wake up to the dangers of formal universality. When, in 1939, the Soviet Union waged her preventive (or aggressive) war against Finland, the League of Nations rose to an unwonted burst of activity and, in an attack of anti-Red righteousness, expelled the Soviet Union with ignominy from its midst.

Like the Covenant, the United Nations seeks material universality by setting out in the Preamble and in Chapter I of the Charter the purposes and principles of the Organisation. Furthermore, every one of the qualifications demanded from new members is designed to achieve material universality. An applicant must fulfil five conditions. It 'must (1) be a State; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so' (Advisory Opinion of the International Court of Justice on *Membership in the United Nations*, 1948).

The first of these conditions requires qualification. The United Nations is based on the principle of the sovereign equality of its members (Paragraph 1 of Article 2 and Article 78 of the Charter). Membership, therefore, is limited to sovereign States. It is a matter for argument whether this condition is fulfilled by Byelorussia and the Ukraine. These federal republics, however, are original members of the United Nations and as such are not subject to the tests with which an applicant for membership has to comply.

Under the Covenant any fully self-governing State, Dominion or Colony was eligible for membership of the League of Nations. The problem of the admission of other than sovereign communities did not arise in the practice of the League, as all the Dominions were original members, and no application for admission from any self-governing colony was ever received. Thus, the intriguing issues never arose how a colony which by definition is an object of international law, that is to say, in a state of dependency, could ever have given effective guarantees of its sincere intention to observe

its international obligations or how a colony could be self-governing in the sense of being a sovereign State.⁶

In this respect, Article 4 of the Charter is more realistic. Sovereign States alone exercise effective control over the inhabitable areas of the world. These members of the international aristocracy, therefore, are best in a position to carry out their obligations under the Charter with respect to the territories under their jurisdiction. If doubts should arise, they do not concern any too narrow limitation of the circle of potential members of the United Nations. They are linked with the growing discrepancy between political and legal sovereignty and de facto dependence of most of the smaller sovereign States on the world powers, their equals only in the eyes of international law.⁷

The second qualification, that is to say, that an applicant must be 'peace-loving', causes more difficulties. Whoever considers this attribute to be the monopoly of democratic communities is entitled to claim this condition as evidence of a tendency towards homogeneous universality in the Charter of the United Nations. He must then, however, remain oblivious of the aggressiveness of French Jacobinism and of the United States in the nineteenth century. It is possible, too, to explain this term in its context of 'all other peace-loving States'. In contrast to the original members of the United Nations, applicants for membership are the 'other' peace-loving States. In view of the record of most of the members of the United Nations in the more distant past, it may be charitably assumed that love of peace is to be interpreted by reference to more recent history. Even so the record of the Soviet Union, expelled from the League of Nations for insufficient love of peace, comes to mind. What, then, does this term mean?

On the inter-Allied level, the terminology was first used in the Four-Power Declaration on General Security (Moscow, October 30, 1943). It was embodied in the Dumbarton Oaks Proposals and incorporated, though with misgivings, into Article 4 of the Charter of the United Nations. According to the Report of Committee I/2 to Commission I on Chapter III of the Charter, the term was 'generally deemed insufficient'. In the Rapporteur's words, 'to declare oneself "peace-loving" does not suffice to acquire membership in the Organisation. What nation has ever professed any other sentiments?'

The alternative to accepting the word of an applicant State for its love of peace is to leave this matter with those who have to decide on the admission. Thus, a peace-loving State within the

⁶ See above, p. 89.

⁷ See above, p. 111 *et seq.*

meaning of the Charter may be defined as a State which, in the opinion of the necessary majorities in the Security Council and in the General Assembly, is deemed to be a peace-loving State.

The peace-loving character of a new member is directly relevant for the fulfilment of the functions of an international organisation the chief purpose of which is the maintenance of world peace. If, therefore, the United Nations is open to all peace-loving States, this qualification must be interpreted as a further assertion of the principle of material universality in the Charter of the United Nations.

The same applies to the other three prerequisites of admission to membership. In contrast to Article 1 of the Covenant, which only asked for sincere intentions on the part of an applicant to observe its international obligations, the Charter demands evidence, too, of the capability on the part of an applicant to carry out the obligations of the Charter.

The proceedings of the Conferences of San Francisco and of Potsdam, and the practice of the United Nations regarding the admission of new members throw further light on the views of the members of the United Nations on the principle of material universality.

The San Francisco Conference adopted a Mexican declaration which obliquely aimed at Franco Spain. It meant to keep the doors of the United Nations shut to 'States whose regimes have been established with the help of military forces belonging to the countries which have waged war against the United Nations, as long as those regimes are in power'. The Potsdam Conference endorsed this view, directly naming the Franco regime: 'The Three Governments . . . would not favour any application for membership put forward by the present Spanish Government, which, having been founded with the support of the Axis Powers, does not, in view of its origins, its nature, its record and its close association with the aggressor States, possess the qualifications necessary to justify such membership'. The Conference, however, made it clear that the Big Three did not desire to exclude from membership of the United Nations other neutral States which fulfilled the qualifications of the Charter for admission. On the contrary, they undertook to support such applications.

Formally, the Resolutions of the Potsdam Conference are irrelevant for purposes of interpreting the Charter. They are *res inter alios acta*. The General Assembly may, however, decide on the admission of an applicant only on the positive recommendation of the Security Council. A recommendation of this kind is a matter of substance and as such subject to the exercise of the veto. The

decisions of the Potsdam Conference constitute binding commitments among three of the permanent members of the Security Council on the future use of their votes in the Security Council. The argument that such arrangements are possibly incompatible with the Charter, is entirely Platonic; for, in good faith, the powers concerned would be bound to cast their votes in accordance with such understandings.

Only in the case of the neutral countries did the Big Three undertake unconditionally to support such applications. In the case of Spain they merely agreed not to vote in favour of any such application. According to the text of Paragraph 3 of Article 27 of the Charter this would amount to a negative vote, as decisions of the Council—and any such recommendation is a decision within the meaning of this Article—require the concurring votes of each of the permanent members. A contrary practice, however, has grown up in the Security Council. Abstention or absence by a permanent member of the Security Council is not considered to amount to the exercise of the veto unless this is expressly indicated by the member concerned. Yet, so long as the Soviet Union maintains her attitude of uncompromising opposition to the admission of Franco Spain to the United Nations, even a majority vote, with the United Kingdom and the United States abstaining, could not secure the admission of Franco Spain to the United Nations.

It must be inferred from the Declarations of the Conferences of San Francisco and Potsdam regarding Spain that the connection of a regime with the former Axis Powers establishes a presumption against its peace-loving character and against its willingness, if admitted to the United Nations, to carry out effectively its obligations under the Charter. It, therefore, was necessary for the Big Three to define their attitude towards the admission to the United Nations of Italy and of the satellites of the European Axis.

The Potsdam Conference recalled that Italy had been the first of the Axis Powers to break with Germany, that she had made a material contribution to Germany's defeat, and that she had joined the Allies in the war against Japan. Furthermore, Italy had freed herself from the Fascist regime and made good progress towards the re-establishment of a democratic government and of democratic institutions. The Big Three, therefore, resolved to consider an application by Italy for membership of the United Nations favourably, once a Peace Treaty was concluded with a 'recognised and democratic Italian Government'. Support of applications from Bulgaria, Finland, Hungary and Rumania was made dependent on the same conditions.

The insistence on democratic governments in Spain, Italy and the four satellites as a condition of admission to membership was not

intended by the Big Three to convey any departure from the principle of heterogeneous universality. Rather, the establishment of democratic regimes was thought to constitute practical evidence of the break of these countries with their Axis past and, thus, of their reformed and now peace-loving character.

Similarly, the condition of recognised governments in these countries served the purposes of material universality. Only if these States had established governments in whom each of the Big Three had sufficient confidence, could the Big Three be expected to attest that these States were capable and willing to carry out their obligations under the Charter. Subsequently, however, some of the members of the Security Council voted in favour of the admission of candidates whose governments they had not yet recognised. Thus, at the 57th Meeting of the Security Council held on August 29th, 1946, France and the United States supported the admission of Jordan, although neither of them had yet recognised it. Recognition was not accorded by France until January, 1948, and by the United States not until January, 1949. At the same meeting of the Security Council, both France and Poland supported the admission of the People's Republic of Mongolia, which has not yet been recognised by France, and which was not recognised by Poland until April, 1950.

The views taken by the members of the United Nations on material universality were further elucidated by the way in which the Security Council and the General Assembly handled the applications from candidates for membership of the United Nations.

The nine States admitted to membership fall into three categories. The first group consists of countries which had in fact taken part in the war effort of the United Nations, but had only since achieved the status of sovereign States: Burma, Iceland, Indonesia, Israel and Pakistan. The second comprises neutral States to whose record the United Nations did not raise any objection: Afghanistan, Sweden and Yemen. The last was made up by Siam. This country had attacked French Indo-China, but had given valuable secret assistance to the Allied war effort against Japan. It was, therefore, left to France and Siam to terminate the state of war between them and to restore the pre-war territorial status. After this had been achieved, France waived her objections to Siam's candidature.

The rest of the candidates fell foul either of the majority of the Security Council or of the Soviet Union. The Western powers opposed the admission of Northern Korea on the ground that this State had been created contrary to a resolution of the General Assembly of the United Nations. The United States and the United

Kingdom declared themselves against the admission of Outer Mongolia as, in their opinion, it was not an independent State. The latter case was aggravated by a Mongol invasion of Chinese territory, which brought China, too, into action against this applicant.

The Soviet Union reciprocated by challenging the independence of Austria, Ceylon, Jordan and Southern Korea. She vetoed Eire and Portugal on the ground, inter alia, of the leanings of these countries during the war towards the Axis Powers. The Western powers did not think that the incidents in the Corfu Channel offered evidence for the peace-loving character of Albania and failed to see that Bulgaria, Hungary and Rumania were democratic States in any meaning of the term. In addition, these three States flouted rather impertinently their obligations under the Peace Treaties. Such behaviour did not augur well for their willingness to carry out their international obligations under the Charter.

The permanent members of the Security Council agreed on Finland and Italy fulfilling all conditions for admission to membership. In view, however, of the insistence of the Soviet Union that all the European ex-enemy States should be treated alike, both these States still stand on the doorstep of the United Nations.

The Advisory Opinion of the International Court of Justice on *Membership in the United Nations* (1948) leaves this position unaffected. Instead of openly admitting her reason for a negative vote, the Soviet Union will veto in future every candidate put forward by the Western powers 'as such' until these are prepared to reciprocate where Soviet *protégés* are concerned. On both sides of the fence, the aim is no longer material universality, but the exclusion of applicants which are likely to be of assistance to the other camp. Sovereignty and the other criteria of material universality are closely scrutinised to provide reasons for blackballing each other's 'satellites'. The two Koreas are the perfect symbols of this attitude, with Mongolia and Jordan as close runners-up. What the members of the United Nations practise is formal universality in reverse. They keep out of the United Nations States anxious to join, irrespective of whether candidates comply with the criteria of material universality laid down in Article 4 of the Charter. They have transformed an open association into a closed society.

STRUCTURE

The League of Nations and the United Nations differ from other confederations in the scope of their membership and in the comprehensiveness of their objects. The structural similarities, however,

between confederations of any kind are more significant than the differences between them. The choice of this pattern is indicative of a mental reservation on the part of members to remain in substance masters of their own fate and to subordinate to this consideration the achievement of the common objectives. The members of such a confederation retain the substance of their sovereignty, but limit its exercise by a multilateral treaty, be it named constitution, covenant or charter. Each of them retains undivided control over its own subjects.⁸

The organs of the confederation must deal with each of the members as a collective unit and not purport to establish any direct contact with, nor claim any allegiance from, the subjects of the member States. Finally, the member States retain their control over their armed forces and over the substance of their financial resources. The assemblies, councils and secretariats of confederations, therefore, may give the appearance of legislative, governmental and administrative institutions. They lack, however, the power of overriding decision whenever this would matter most. The sovereignty of member States is not effectively limited to the extent to which this is necessary in the interest of the fulfilment of the objects of a confederation. The position is rather the reverse. The fulfilment of the objects must take second place, whenever it would seriously interfere with the independence of the member States.

It was not accidental that the victors in both world wars preferred the confederate pattern to the federal solution. To decide in favour of a world federation would have meant to run counter to all those vested material and ideological interests which still make the sovereign State the reality that it is,⁹ and the sum total of which makes up the international aristocracy and oligarchy of sovereign States.¹⁰

In the Covenant and practice of the League of Nations the principle of State independence was safeguarded in a variety of ways.

It was stressed in the Preamble that the objects of the League of Nations were to be attained 'by the firm establishment of the understandings of international law as the actual rule of conduct among governments'. This in itself was an indirect re-affirmation of the principle of State sovereignty; for 'the principle of the independence of States is a fundamental principle of international law' (The Permanent Court of International Justice in the case on *The Status of Eastern Carelia*, 1923):

⁸ See above, p. 244 *et seq.*

⁹ See above, p. 84 *et seq.*

¹⁰ See above, p. 102 *et seq.*

Moreover, any party to a dispute before the Council or Assembly of the League of Nations was free to raise the objection that the conflict had arisen out of a matter which by international law was solely within its domestic jurisdiction. If this claim was found to be justified by the Council or the Assembly neither of them could proceed any further.

Even when there was no bar to the jurisdiction of the League organs in a dispute, the Council and Assembly could not take any decision, but were only able to make recommendations. If these were carried by a majority only, they had no legal effect whatsoever. If adopted unanimously, irrespective of the votes of the parties, such recommendations had only negative consequences. The members of the League were merely committed not to go to war with the party to the dispute which complied with such recommendations.

In the instances in which the Covenant provided for the application of automatic diplomatic and economic sanctions, League practice so transformed this automatism that every member was left to decide in good faith for itself whether the conditions of Paragraph 1 of Article 16 of the Covenant were fulfilled. In any case, the application of military sanctions was entirely optional under the Covenant. Other vital topics, such as disarmament, were made dependent on the consent of each of the members concerned.

Finally, in principle, decisions of the Council and Assembly on all matters other than those of procedure had to be taken unanimously. In the case of disputes under Article 15 of the Covenant the unanimous vote excluded the parties to the dispute. With one exception, topics of substance which the Covenant allowed to be decided by a majority vote referred to domestic affairs of the League of Nations, such as the admission of new members or any increase in the size of the Council.

The exception was the provision for majority decision by the Assembly in a dispute referred to it by the Council. Here—as in the case of the ratification of amendments to the Covenant—the safeguard was that all the members of the Assembly represented on the Council had to concur in the majority vote. Then the absolute veto rested with each of the members of the international oligarchy who was a member of the League and any of the non-permanent members of the Council.

In the practice of the League the question whether a matter was one of procedure or substance was treated as a matter of substance and, thus, subject to the unanimity rule. Nevertheless, in order to keep the wheels going, attempts were made to liberalise the unanimity principle. The majority rule applied in the committee work of the

between confederations of any kind are more significant than the differences between them. The choice of this pattern is indicative of a mental reservation on the part of members to remain in substance masters of their own fate and to subordinate to this consideration the achievement of the common objectives. The members of such a confederation retain the substance of their sovereignty, but limit its exercise by a multilateral treaty, be it named constitution, covenant or charter. Each of them retains undivided control over its own subjects.⁸

The organs of the confederation must deal with each of the members as a collective unit and not purport to establish any direct contact with, nor claim any allegiance from, the subjects of the member States. Finally, the member States retain their control over their armed forces and over the substance of their financial resources. The assemblies, councils and secretariats of confederations, therefore, may give the appearance of legislative, governmental and administrative institutions. They lack, however, the power of overriding decision whenever this would matter most. The sovereignty of member States is not effectively limited to the extent to which this is necessary in the interest of the fulfilment of the objects of a confederation. The position is rather the reverse. The fulfilment of the objects must take second place, whenever it would seriously interfere with the independence of the member States.

It was not accidental that the victors in both world wars preferred the confederate pattern to the federal solution. To decide in favour of a world federation would have meant to run counter to all those vested material and ideological interests which still make the sovereign State the reality that it is,⁹ and the sum total of which makes up the international aristocracy and oligarchy of sovereign States.¹⁰

In the Covenant and practice of the League of Nations the principle of State independence was safeguarded in a variety of ways.

It was stressed in the Preamble that the objects of the League of Nations were to be attained 'by the firm establishment of the understandings of international law as the actual rule of conduct among governments'. This in itself was an indirect re-affirmation of the principle of State sovereignty; for 'the principle of the independence of States is a fundamental principle of international law' (The Permanent Court of International Justice in the case on *The Status of Eastern Carelia*, 1923).¹

⁸ See above, p. 244 *et seq.*

⁹ See above, p. 84 *et seq.*

¹⁰ See above, p. 102 *et seq.*

Moreover, any party to a dispute before the Council or Assembly of the League of Nations was free to raise the objection that the conflict had arisen out of a matter which by international law was solely within its domestic jurisdiction. If this claim was found to be justified by the Council or the Assembly neither of them could proceed any further.

Even when there was no bar to the jurisdiction of the League organs in a dispute, the Council and Assembly could not take any decision, but were only able to make recommendations. If these were carried by a majority only, they had no legal effect whatsoever. If adopted unanimously, irrespective of the votes of the parties, such recommendations had only negative consequences. The members of the League were merely committed not to go to war with the party to the dispute which complied with such recommendations.

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League of Nations. The Assembly distinguished between mere wishes (*vœux*), which were adopted by simple majority, and other recommendations which required unanimity. Recommendations for amendments to the Covenant were exempted from the unanimity rule, as they did not entail any legal obligation for member States. Finally, according to a rule of procedure of the Assembly, States which abstained from voting were considered not to be present at the meeting.

The reason why the guardians of State sovereignty allowed these inroads on the unanimity principle to be made is not far to see. It did not greatly matter what recommendations the Assembly adopted. It is significant, however, that the Council of the League did not follow the example set by the Assembly.

In the main, the Assembly and Council had parallel competences. Nevertheless, the Council was considered by members of the League and public opinion as the weightier of the two League organs. In view of its smaller size, it could be convened more easily than the Assembly and, as a matter of fact, it dealt more frequently than the Assembly with issues which might have involved the application of sanctions. The Council was much more cautious than the Assembly in allowing inroads into the unanimity rule to be made. In the case of disputes under Article 15 of the Covenant the Council was entitled to disregard the votes of the parties to a dispute.

On the strength of the Advisory Opinion of the Permanent Court of Justice in the *Mosul* case (1925) it was possible to go further and to hold that both the Council and the Assembly could do so whenever they acted in a quasi-judicial capacity. Then the general principle of law would apply that nobody can be judge in his own suit.

Actually, the Council proceeded on this assumption not only in the *Mosul* dispute between Great Britain and Turkey, but also in three other instances. In the Polish-Lithuanian dispute over Vilna, the Council overruled in 1922 a Lithuanian objection to the establishment of a commission of inquiry. Again, in the Greco-Bulgarian frontier dispute of 1925, the Council voted on its cease-fire order and on the dispatch of a commission of inquiry in private session, and in the absence of the parties. These were left to register their formal consent in the following public session of the Council. The Council had acted in the same spirit when, as early as 1922, it refused to allow India to take part in the voting on the question whether India should be regarded as one of the States of chief industrial importance and, as such, be entitled to representation on the Governing Body of the International Labour Organisation.

The Council was not always, however, in such a quasi-judicial

mood. Thus, in another dispute between Lithuania and Poland in 1928, the negative vote of Lithuania against a resolution which, otherwise, would have been accepted unanimously, was considered to be sufficient to defeat the resolution. The same happened when, in 1931, the Japanese member of the Council voted against a Resolution under Article 11 of the Covenant by which Japan was asked to withdraw her troops in Manchuria into the railway zone. Again the Resolution was treated as having been lost.

The two categories of cases cannot be distinguished by inherent differences between them. The treatment of any of these cases depended on the mood of the Council. When it was willing to act as an organic body, technicalities were overruled without undue difficulty. When this spirit was absent, or inarticulate divergencies of national interests rendered the Council impotent, then the unanimity principle served as a handy cloak for inaction. Then the Council—and the Assembly—was reduced to what General Smuts had called in his own Plan of 1918 an 'ineffective debating society' or a 'talking shop' (D. H. Miller, *The Drafting of the Covenant*, 1928, Vol. 2).

General Smuts did not think such a League worth having: 'It means that there never will be any decision issuing from the league; that nobody will take the league seriously; that it will not even serve as camouflage; that it will soon be dead and buried, leaving the world worse than it found it.' General Smuts was wrong only in one point. The League's agony was destined to extend over a quarter of a century.

The Charter of the United Nations states the basic principle of State sovereignty more dogmatically than the Covenant. The first of its seven Principles is that 'the Organisation is based on the principle of the sovereign equality of all its members', and the last re-emphasises this principle in a wider formulation than was chosen in the corresponding Paragraph 8 of Article 15 of the League Covenant. Enforcement measures under Chapter VII of the Charter apart, 'nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the members to submit such matter to settlement under the present Charter'.

What is the meaning of the term *intervention* as used in Paragraph 7 of Article 2 of the Charter? In the context of a legal document, it may be held—as it is by Professor Lauterpacht (*International Law and Human Rights*, 1950)—that the word should be interpreted in its strict legal sense, that is to say, as imperative

interference with the affairs of another State, with force in the background.

At first sight, this argument is persuasive. It ignores, however, three essential points.

First, unless authorised by treaty or justified as a reprisal, intervention in the technical sense is illegal. Thus, to interpret intervention in this clause in the technical sense would mean to say that the United Nations, which may be presumed to act in conformity with the principles of justice and international law, should refrain from committing an illegal act.

Secondly, international customary law apart, the fourth of the Principles of the United Nations laid down in Article 2 of the Charter outlaws the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations. It is hard to think of cases of intervention in the technical sense which would not fall under this prohibition. It may be argued that, in the absence of Paragraph 7 of Article 2 of the Charter, the United Nations itself could intervene in ways which, under Paragraph 4 of Article 2, are denied to member States; and that it is the purpose of this clause to rule out this contingency. This line of argument ignores the fact that, with the exception of enforcement measures under Chapter VII of the Charter, the organs of the United Nations have, in any case, no competence to indulge in any intervention in the technical sense. It would make Paragraph 7 of Article 2 of the Charter meaningless, a result of interpretation which should be avoided.

Thirdly, the attempt to restrict 'intervention' under Article 2 of the Charter to 'intervention' as understood in international law, ignores the evidence available in the preparatory material. In contrast to Paragraph 8 of Article 15 of the League Covenant, the Sponsoring Powers refused to accept international law as the yardstick by reference to which it was to be determined whether a matter was essentially within the domestic jurisdiction of a State. In the absence of any conclusive evidence to the contrary, it would be somewhat artificial to hold that the Contracting Parties meant the most important part of one and the same sentence to be interpreted in an entirely pragmatic way and one word in it to be construed in a highly technical sense.

In case anyone remains unconvinced by this exercise in dialectics, Professor Lauterpacht has a second line of argument. This is that, short of resorting to enforcement measures under Chapter VII, the United Nations may only discuss matters and make recommendations. It is, therefore, constitutionally incapable of intervention in

the technical sense and, in consequence, Paragraph 7 of Article 2 of the Charter is largely meaningless. Presumably, the draftsmen of the Charter, too, were conversant with the merely advisory character of the General Assembly. If, nevertheless, they inserted this clause into the Charter and gave it a distinguished place as one of the seven guiding Principles, it would be contrary to all the accepted—and no less technical—canons of treaty interpretation to hold that this Principle is utterly meaningless. The result to which this argument would lead is itself a warning against any strained interpretation of the term *intervention* in Paragraph 7 of Article 2 of the Charter.

Actually, a less tautological interpretation of Paragraph 7 of Article 2 of the Charter does not present undue difficulties. With the modifications which were expressly introduced, this Paragraph was meant to fulfil much the same functions as Paragraph 8 of Article 15 had fulfilled in the system of the League Covenant. The United Nations was not to concern itself with matters which were essentially within the domestic jurisdiction of States. These were to be *ultra vires*. What these matters would be was not settled once and for all in advance. This was to be left to the future and to be decided pragmatically in the practice of the United Nations.¹¹

Similarly, in contrast to the Covenant, the Charter left open who was to decide on the applicability of this far-reaching reservation to the jurisdiction of all the organs of the United Nations.

On the surface, it appears as if the Charter of the United Nations itself had provided the necessary checks against any disruptive effects of the principle of State independence. The majority rule (simple and qualified majorities) applies in all the organs of the United Nations. The Security Council has been entrusted with executive functions and, in certain contingencies, it represents all the members of the Organisation. The Charter is not only concerned with the rights and duties of States, but also aims at the protection of fundamental human rights. On closer scrutiny, however, these differences between the Charter and the Covenant vanish.

The General Assembly has only the right to discuss matters within its jurisdiction and to make recommendations on such topics. *A fortiori*, the same applies to the Economic and Social Council and to the Trusteeship Council. Although they are styled principal organs in the Charter, they are only auxiliary organs of the General Assembly. The more far-reaching jurisdiction of the Trusteeship Council regarding trust territories is only an apparent exception to this rule. The Trusteeship Council exercises such powers as it has

¹¹ See below, pp. 476 and 627 *et seq.*

only over territories which, by the consent of the powers concerned, have been put under trusteeship.

The Security Council has been endowed with true executive and representative functions in Chapter VII of the Charter, that is to say, when action is required with respect to threats to the peace, breaches of the peace, and acts of aggression. Under this heading, however, every one of the permanent members of the Security Council holds an absolute veto on all matters save those of procedure.

As in the League of Nations, the question of whether a matter is one of procedure or of substance is itself a matter of substance and, as such, subject to the veto. In United Nations terminology, this is known as the double veto.

The exceptional position of the world powers is accurately described in the Statement of the Four Sponsoring Powers which was issued during the Conference of San Francisco. It represents the views of China, the Soviet Union, the United Kingdom and the United States. Subsequently, France associated herself with this document. It is based on the principle that responsibility must go hand in hand with power: 'In view of the primary responsibilities of the permanent members, they could not be expected, in the present conditions of the world, to assume the obligation to act in so serious a matter as the maintenance of international peace and security, in consequence of a decision in which they had not concurred.' Even if one of these powers itself should be a party to a dispute, it decides for itself on the aggressive or defensive character of its own action under Article 51 of the Charter. In short, by its veto, it may stop any collective action directed against itself and, thus, immobilise the collective system.

The United Nations is as two-faced as the old god Janus. Provided that the permanent members of the Security Council are unanimous, the United Nations subordinates the principle of State independence to the achievement of the objects of the Organisation. If they are not, the United Nations shows all the congenital limitations of a confederation.

In this respect the situation remains fundamentally the same as it has been under the aegis of the Concert of Europe and in the era of the League of Nations. So long as the international oligarchy is united, it exercises an effective control over the other members of the international aristocracy.

The only difference of substance is that, in the Charter of the United Nations, the privileged position of the world powers is defined more explicitly in legal terms. Seven members of the Security Council may—so long as all the permanent members concur—commit

the other members of the United Nations in matters which involve the maintenance or restoration of international peace and security. Every one of these permanent members, however, remains a law unto itself.

Formally, the world powers do not stand above the law of the United Nations. Yet each of them may prevent a majority decision of the Security Council from becoming effective and is immune from the enforcement against itself of the will of the United Nations. The reason for this state of affairs is stated in straightforward language in the British Commentary on the Charter :

'It is . . . clear that no enforcement action by the Organisation can be taken against a Great Power itself without a major war. If such a situation arises the United Nations will have failed in its purpose and all members will have to act as seems best in the circumstances The successful working of the United Nations depends on the preservation of the unanimity of the Great Powers If this unanimity is seriously undermined no provision of the Charter is likely to be of much avail.'

In other words, the gap between legal and political sovereignty has widened further than ever before. The interdependence of middle powers and small States, and their dependence on the world powers, can be, and is, taken for granted. What is still sacrosanct is the sovereignty of the world powers.

Thus, the Charter of the United Nations faithfully reflects the present stage reached in the process of centralisation in international society and the corresponding reduction in the number of politically sovereign States. It requires a considerable capacity for abstraction from reality to see in these trends any development towards international government in any other sense than this has always been practised by the greater powers.

Hope for unanimity among the world powers can probably no longer be based on 'good grounds for believing that the great powers are determined to avoid actions which would destroy their unanimity' (*British Commentary on the Charter*). Is there any more reason why, instead, such faith should be based on the provisions for the protection of human rights in the Charter? Will they, like the trumpets of Jericho, make the walls of national sovereignty come a-tumbling down, or are they like the steady drops of water which, in the end, achieve the same object in a less spectacular manner?

The Charter itself holds out little hope that the United Nations will be able to attack State independence in either way. In the Preamble, the members of the United Nations merely express their determination to reaffirm faith in fundamental human rights. In the

Purposes of the Organisation the promotion of, and the encouragement of respect for, these rights is listed as one item together with—and after—other objects of the United Nations, such as the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian character. The organ which is entrusted with the promotion of these objects is the Economic and Social Council. Like the General Assembly, to which it is responsible, it may make or initiate studies and reports, make recommendations, prepare draft conventions and call conferences on any of these topics. The final decision, however, on any such recommendations and draft conventions is reserved to each member of the United Nations.¹²

In response to a suggestion of the United States delegation, the Conference of San Francisco had proudly introduced the Charter with the words: 'We the Peoples of the United Nations . . . have resolved to combine our efforts to accomplish these aims.' Actually, the peoples of the members of the United Nations had as much, or as little, part in the making of the Charter as in that of any other international treaty.

Quasi-federal terminology cannot alter the fact that the United Nations is based on the confederate and not on the federal pattern. Its inarticulate major premise is the unanimity of the world powers or, in other words, respect for their sovereignty. This is the foundation of the United Nations. Without it, the United Nations is like a skyscraper built on sand.

GUIDING PRINCIPLES

Both the Covenant and the Charter lay down standards of international conduct. They differ, however, in their emphasis. The draftsmen of the Covenant addressed the individual contracting parties and ignored the League of Nations as a separate entity. The Charter of the United Nations imposes principles on the Organisation, on its members and even on non-members.

The formulation of the guiding principles in the Preamble to the Covenant had a tactical purpose which could be ignored in drafting the Charter of the United Nations. The object then was to make the Covenant binding upon the former Central Powers irrespective of their membership of the League of Nations.

Another distinguishing feature is that the Covenant gave greater prominence than does the Charter to international law and, especially, to the observance of treaty obligations. This was primarily due

to French insistence. Their primary concern was the maintenance of the status quo as laid down in the Peace Treaties of Paris. In contrast to this more legalistic approach, the Dumbarton Oaks Proposals contained only one passing reference to international law. This omission was somewhat remedied at San Francisco.

Nevertheless, the principles on which the United Nations is founded are in substance the same as those which had been embodied in the Covenant. They may be reduced to three basic propositions. The Organisation and its members should act in accordance with international law. Members and non-members should behave as befits peace-loving nations. They should accept the obligations which are inherent in the existence of a collective system with universal objects.

It is necessary to keep in mind that the draftsmen of the Charter did not draw any rigid distinction between the Preamble, the Purposes of the United Nations laid down in Article 1, and the Principles stated in Article 2. In the words of the Rapporteur of Committee I/1 to Commission I of the San Francisco Conference:

'It was very difficult, practically impossible, to draw a sharp and clear-cut distinction between what should be included under Purposes, Principles, or Preamble. Given the nature of the substance we have in view, some single idea or norm of conduct could go into either of these divisions of the Charter without much difficulty. In fact, some questions were transferred during our deliberations from Purposes to Principles and found at last their final place in the Preamble.'

Conformity with International Law. The Covenant of the League of Nations called for the 'firm establishment of the understandings of international law as the actual rule of conduct among governments' for the 'maintenance of justice' and for a 'scrupulous respect for all treaty obligations' (Preamble).

The Charter makes it one of the subsidiary objects of the United Nations to 'establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained' (Preamble). In Article 1, it refers again to the principles of justice and international law, as standards by reference to which international disputes should be settled. The principles of justice are enumerated separately from those of international law. They are, however, general principles of law recognised by civilised nations. As such, they are implied in the sources of international law, mentioned in the Preamble.

✓✓ The principle of sovereign equality, listed separately in Article 2 (1), is a principle of international customary law, and Paragraph 7

of Article 2 repeats the same rule in other words. Similarly, the principle of the fulfilment, in good faith, of obligations under the Charter (Article 2 (2)) is a general rule of treaty interpretation. Thus, three of the avowed principles of the United Nations are concerned with various aspects of respect for international law.

In addition, certain features of the protection of human rights, enumerated in the Preamble and in Article 1 of the Charter, fall under this heading. International law has established minimum standards of civilisation for the treatment of foreigners. The ill-treatment of the nationals of a State may also amount to an abuse of sovereignty. Within these limits, respect for international law demands the protection of human rights. Beyond this, however, the Organisation may not intervene—in the wide sense in which this term is used in Paragraph 7 of Article 2 of the Charter¹³—in the internal affairs of a member State without obtaining the latter's consent. This would amount to disrespect for international law and constitute a contravention of Principles 1 and 7 of the Charter. The Contracting Parties have permitted the United Nations to do so only within the limits of the competences granted to the organs of the United Nations. In this field, the General Assembly and the Economic and Social Council are limited to their normal advisory functions.

Peaceful Behaviour. The Covenant sought to assure world peace not only by relying on the compliance of States with existing international law, but also by its development through the 'acceptance of obligations not to resort to war'. It left loopholes which permitted war in certain contingencies and left open the question of military reprisals short of war. Finally, it prescribed 'open, just and honourable relations between nations'. It is unnecessary to describe at this stage how the 'open' diplomacy of the inter-war period redeemed this pledge.

The Charter of the United Nations sets out in negative and positive terms the principles with which members shall comply in order to maintain peaceful relations among themselves. They shall 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations' (Article 2 (4)). Thus, the legal quibble whether military measures short of war were permissible under the Covenant has been settled unequivocally in the Charter. Members are enjoined to 'settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered' (Article 2 (3)).

So far as may be necessary for the maintenance of international peace and security, the Organisation is to ensure that non-members act in accordance with the Principles of the United Nations (Article 2 (6)). To the extent to which these Principles constitute a development of traditional international law, the United Nations will be faced with a difficult choice. If a non-member should insist on its rights under international law, the United Nations will have to weigh the relative disadvantages of overriding international law or of neglecting its duties as guardian of international peace and security.

The Principle of Collective Action. Members of a collective system which provides for a distinction between legal and illegal war and for the application of sanctions, optional or obligatory, against a pact-breaker have authorised each other in advance to dispense with the duties of traditional neutrality. So much is partly stated and partly implied in Articles 16 and 20 of the Covenant and in the corresponding Articles 41 and 103 of the Charter.

The corresponding duties towards the victim of a pact-breaker and towards other members engaged in the application of sanctions depend on the optional or compulsory character of the sanctions that are actually provided by any particular collective system. The non-recognition of territorial changes achieved by means of aggression was implied in the duty of members of the League to respect and preserve against external aggression the territorial integrity and political independence of other members.¹⁴ Further duties were laid down in Paragraph 1 of Article 16 of the Covenant. They amounted to the automatic rupture of diplomatic relations and severance of all trade and financial relations with the aggressor.¹⁵

The Charter expresses the principle of collective action in more general and articulate terms: 'All members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action' (Article 2 (5)).

In contrast to the Covenant, the members of the United Nations do not guarantee to each other their territorial integrity or political independence. It does not appear as if this omission were of major significance. If members respect each other's sovereignty and refrain from the use of force against each other, the territorial integrity and political independence of members are well protected. If, however, owing to disunity between the world powers, the sanctions machinery of the United Nations should remain inoperative, such a guarantee

¹⁴ See below, p. 494 *et seq.*

¹⁵ See below, p. 496.

would be futile. China and Ethiopia had enjoyed the protection of Article 10 of the Covenant. Again, in relation to non-member States, compliance with this principle may involve members in a conflict between their duties towards each other under the Charter and towards non-members under international customary law.

THE GENERAL DESIGN

The chief purpose of the United Nations is the prevention of war. At the lowest, this proposition implies a considerable limitation in the tactics of international politics as practised hitherto. The members of the United Nations have renounced war as an alternative to political and economic pressure. At the highest, the establishment of the United Nations amounts to the transformation of international society into an international community.

In the air and atomic age, peace can either be maintained on a world-wide scale or not at all. The type of war which endangers international peace and security is not a local war between small States or middle powers, but a war between any of the world powers, of necessity a world war.

In order to guard against this danger, the founders of the United Nations have relied on the confederate pattern. Experiences with previous confederations, and especially with the League of Nations, should serve as a warning against uncritical acceptance of words for deeds and against complacency regarding a collective system that is built on such slender foundations.

The value of the United Nations cannot be judged by discourses in the abstract on its objects, purposes and principles. They have to be tested by reference to the means which are at the disposal of the United Nations for the achievement of its purposes, and by the use which is actually made of this machinery.

At the First Plenary Session of the San Francisco Conference, Mr. Stettinius ventured to prophesy that 'for centuries to come, men will point to the United Nations as history's most convincing proof of what miracles can be accomplished by nations joined together in a righteous cause'.

When the United States Secretary of State gave this highly optimistic horoscope to the United Nations, he perhaps did not recall that an organisation of the same name had existed on American soil little less than two hundred years ago. In dusty records we may read that, on one memorable occasion, in 1758, another United Nations, a loose confederation of North American Indian tribes, met in solemn conference with some of the British colonial governors.

Differing in this from the delegates at San Francisco, they exchanged strings of wampum and belts as tokens of earnest intentions. In a speech which would have been equally appropriate at any gathering of the other United Nations, Governor Denny set forth to the Indian chieftains the high hopes which he placed on the treaty to be concluded between these tribes and the colonies of Pennsylvania and New Jersey. This document, too, was meant to express the mutual desire of all present that 'everything may be settled so as no doubt may remain to create any uneasiness in our hearts hereafter'. One day, perhaps, the United Nations will initiate a study into the fate that befell its namesake.

CHAPTER 26

THE UNITED NATIONS: THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

'The danger in the future is the possibility of conflicts among ourselves.' Marshal Stalin (Crimea Conference, 1945).

WAR cannot be outlawed by the adoption of resolutions or the conclusion of solemn pacts alone. In a dynamic world such purely negative declamations are likely to remain empty gestures. To implement them effectively would require the existence of a strong international authority with overriding power.

Even in powerful States, where the population is effectively disarmed, and the government firmly holds the monopoly of military power, the need for the use of executive power is reduced in a variety of ways. Force is reserved for the oppression of lawlessness and for the prevention of any attempt at the violent overthrow of the prevailing order. Courts and quasi-judicial organs exist for the adjudication of private and public lawsuits. Compulsory machinery of conciliation and arbitration is provided for the adjustment of labour disputes and other serious conflicts between antagonistic pressure groups. The legislature is always in the background or, more frequently in our time, working to full capacity and beyond in order to adapt the law to changing requirements and to shifts in the political balance of power.

At this price, most States at most times avoid revolution and attain social peace. Even such an abundance of devices does not offer any absolute insurance against political revolution or against social earthquakes such as the French Revolution of 1789 or the Bolshevik Revolution of 1917.

The development of judicial and quasi-judicial institutions in pre 1914 international society was wholly inadequate as a constructive alternative to war. The use of mediation and arbitration in interstate disputes was merely optional. These institutions were hardly meant to be effective substitutes for war.¹

The founders of the League of Nations and of the United Nations decided in favour of more comprehensive schemes. They left it to the individual parties to agree or to disagree on the legal or political

¹ See above, p. 225 *et seq.*

character of their conflicts. The mode of international settlement would depend on this preliminary decision. If both parties agreed on the legal character of a dispute, they were encouraged to settle their difference by arbitration or by referring the case to the World Court. If one of the parties considered the conflict to be of a political character, either of them could call upon quasi-judicial organs. Some attempts were even made to attack the wider problem of peaceful change.

The systems of the League of Nations and of the United Nations for the pacific settlement of international disputes differ in the underlying assumptions on the causes of war. In this respect, the provision in the League Covenant for a cooling-off period prior to resort to war was significant. The draftsmen of the Covenant were more concerned with avoiding any accidental war than with preventing cold-blooded aggression. The totalitarian aggressors of the inter-war period taught the world that war in anger no longer constituted the main danger to peace.

It would, however, be unfair to imply that the members of the future League had not been warned against undue complacency on this score. Larnaude, one of the two French members of the Commission of the Peace Conference on the League of Nations, recounted at the twelfth meeting of the Commission what sad experience had taught the French people: 'History shows that all recent wars have begun with a sudden attack. Such is the necessity of modern war: war cannot succeed unless it is unexpected and crushing.'

There is no constructive answer to the problem of calculated aggression. Within the confines of an international confederation, the only effective antidote to wilful resort to armed force is a strong system of collective security.

Even in the case of political disputes, the assumption must be that such conflicts are arguable on rational grounds, and that they can be peacefully adjusted. Conversely, it follows that no form of machinery can be devised on the confederate plane for settling the most dangerous type of international conflicts: those of an ideological character. Predominantly, they are of an irrational character, for the foundations on which any ideology or creed rest, are unverifiable. Issues such as Christendom *versus* Islam, Catholicism *versus* Protestantism, Calvinism *versus* Lutheranism, Absolutism *versus* Democracy, Feudalism *versus* Capitalism, or Democracy *versus* Totalitarianism may be peacefully adjusted within highly integrated communities. Even there this is the exception rather than the rule; for most people are tolerant only over matters for which they care little.

International society cannot offer to States common bonds of a strength comparable with those which link together hostile brothers within the same nation, empire or commonwealth. It must leave it to the self-restraint of governments on the level of inter-State relations studiously to ignore such highly inflammable material. Once States depart from this path of wisdom and enrol themselves as standard bearers of ideological missions, they raise passions inside, and outside, their own frontiers, which they themselves may no longer be able to control. At this point, we reach the limits of rational procedures for the peaceful settlement of legal and political disputes and of peaceful change within so loose an association as an international confederation.

Each of the three sides of the pacific settlement of international disputes calls for separate discussion.

LEGAL DISPUTES

The International Court of Justice is the principal judicial organ of the United Nations. The Permanent Court of International Justice fulfilled a corresponding function for the League of Nations. The student of international relations may ignore the formal break in the continuity of the World Court. His chief problem is whether the World Court constitutes any advance upon the pre-1914 type of judicial international institutions.

Compared with the Permanent Court of Arbitration, the World Court is a considerable improvement. A procedure for the election of judges has been devised which keeps a proper balance between the influence exercised by greater powers and small States. Failure to harmonise these diverging interests had been one of the chief reasons which condemned the Permanent Court of Arbitration to remain a pompous framework for a mere panel of arbitrators.

With the establishment of the Permanent Court of International Justice, the essential step was taken of creating an international Court in the true sense. Its members are full-time judges. Their number—fifteen—is sufficiently large to allow the chief legal systems of the world to be represented on the world bench and small enough to make possible the growth of a corporate spirit among the judges.

The jurisdiction of the Court extends to any dispute which the parties agree to submit to it. In principle, the World Court applies international law in accordance with the hierarchy of sources laid down in Article 38 of its Statute. Parties may, however, authorise the Court to decide any individual case *ex aequo et bono*, that is to say, even to override international law in the interest of justice and equity.

The Optional Clause of Article 36 of the Statute enables parties to the Statute to establish a limited jurisdiction of the Court for any legal disputes in four categories. These comprise the interpretation of treaties; any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation, and the nature or extent of the reparation to be made for the breach of an international obligation.

Under the Statute of the Permanent Court of International Justice, forty-six States had signed the Optional Clause. Only thirty-five States are signatories to the corresponding Article in the Statute of the International Court of Justice. Some of them have qualified their declarations by serious reservations. The most dubious is that which the United States introduced into the practice of the United Nations. It exempts from the jurisdiction of the World Court disputes with regard to matters which are essentially within the domestic jurisdiction of the United States 'as determined by the United States of America'.

This reservation challenges the exclusive jurisdiction of the Court to determine by reference to international law whether a dispute falls within this category. Thus, it throws doubt on the established legal principle that international Courts and tribunals themselves decide on their own jurisdiction, and it runs counter to Paragraph 6 of Article 36 of the Statute which expressly embodies this rule.

Neither the Soviet Union nor any of the European members of the United Nations under Soviet control have accepted the limited jurisdiction of the International Court of Justice under the Optional Clause. This reserved attitude is in keeping with Soviet legal doctrine. If the view is accepted that law is primarily a function of politics, the Soviet Union cannot expect justice from any international Court or tribunal. Then the situation is still substantially as it had been stated by M. Litvinov at the Hague Conference of 1922 on the Liquidation of the Russian Debts: 'It was necessary to face the fact that there was not one world but two—a Soviet world and a non-Soviet world. Because there was no third world to arbitrate, he anticipated difficulties. . . . The division he had mentioned existed, and with it existed a bias and hatred, for which the Russian Government must decline the responsibility. Only an angel could be unbiased in judging Russian affairs.' Similarly, one of the grounds on which the Soviet Government had refused to take part in the proceedings before the Permanent Court of International Justice on *Eastern Carelia* (1923), was that she did not consider 'the so-called League of Nations and the Permanent Court as impartial in this matter'.

In addition to the jurisdiction of the World Court in contentious proceedings, the International Court of Justice is authorised, but not bound, to give an advisory opinion on any legal question submitted to it by the General Assembly or by the Security Council. Other organs of the United Nations and specialised agencies, which are authorised to do so by the General Assembly, have the right to ask the Court for an advisory opinion, but only regarding legal questions arising within the scope of their activities. The General Assembly has granted such powers to the Economic and Social Council, the Trusteeship Council and a number of specialised agencies of the United Nations.

The Permanent Court of International Justice established a firm practice regarding the standards to be applied in proceedings leading up to an advisory opinion. Increasingly, it assimilated such proceedings to those in cases of contentious litigation before the Court. In fact, therefore, its advisory opinions had the same authority as precedents of a persuasive character as the Court's judgments. This tendency was strengthened by the practice of the League Council to consider a subject as closed once the Court had given its opinion and to act in accordance with the Court's advice.

Advisory opinions of the International Court of Justice may be an indirect means of overcoming the apparent hesitation of the members of the United Nations to bring cases before the International Court of Justice. It is arguable that a request by the Security Council for an advisory opinion is a matter of procedure and, as such, not subject to the veto. Any permanent member of the Security Council, however, is free to interpose its veto against such a view and, thus, to transform the question of such a request into a matter of substance.

The request by the General Assembly for an advisory opinion is not mentioned in Article 18 (2) of the Charter as one of the important questions which require a two-thirds majority. The list of subjects enumerated in this paragraph, however, is not exhaustive. In case of doubt, such a request is likely to be treated as an important matter, especially if the General Assembly should develop a practice of abiding by advisory opinions of the Court. In the Economic and Social Council and in the Trusteeship Council simple majorities suffice.

The impressive list of eighty orders, judgments and advisory opinions of the World Court during the inter-war period may convey an exaggerated impression of the place of the Permanent Court of International Justice in international relations. The greater part of the cases which were brought before the Court by way of contentious proceedings arose out of the execution of the Peace Treaties of 1919.

Having laid down the law in these treaties, the victors did not run any great risk in giving the World Court power of decision or in asking it for advisory opinions on the interpretation and application of these treaties. Similarly, the defeated States could only improve their position if they could argue their cases before an impartial organ instead of having to face their former enemies alone.

The absence of peace treaties with Germany and Japan and the lack of corresponding provisions in the Peace Settlements of Paris of 1947 account in part for the decline in the number of cases which have been adjudicated by the International Court of Justice. In part, too, the general deterioration in the political climate of the post-1945 period is responsible for the relative neglect of the World Court.

If attention is concentrated on the political significance of the cases brought before the World Court the process of deflation continues apace. We need only ask ourselves what would have happened if any of these cases had not been settled by the World Court. In answering such a hypothetical question, allowance must be made for a considerable measure of disagreement. It would, however, be hard to point to a single case where the alternative to settlement of the conflict by the World Court would have been war.

The *Corfu* incident (1946—decided by the World Court in 1949) between Albania and the United Kingdom may be thought to be such an exception. Great Britain certainly showed remarkable restraint, under provocation, in her handling of these incidents. It was open to Great Britain to take immediate measures of self-defence against Albania in order to prevent any repetition of the attacks. Once, however, it had been decided not to use such measures of individual self-defence, the United Kingdom was bound to comply with Paragraph 4 of Article 2 of the Charter, that is to say, to refrain from using force against the territorial integrity or political independence of Albania. This was not, however, the decisive point.

Albania is one of the Soviet satellites. Any attack on Albania might have involved war with the Soviet Union, and war between Great Britain and the Soviet Union would have been a world war. It is unlikely that Great Britain would have been prepared to make the incidents in the Corfu Channel the cause of the Third World War. Thus, even if Albania had not accepted the judicial settlement of this question, the result would not have been very different from the existing situation in which Albania refuses to comply with the Court's judgment.

Conversely, neither the Western powers nor the Soviet Union showed any inclination to submit to the International Court of

Justice major issues such as the legal aspects of the Palestine problem,² the mutually alleged breaches of the Potsdam Agreement,³ the legality of the Berlin Blockade or the compatibility of the North Atlantic Pact with the Charter of the United Nations.⁴ In the international sphere, the maxim still holds true: *De maximis non curat praetor*.

The real importance of the work of the World Court lies in a different field. In its practice the Court has built up an extensive body of case-law which is evidence of existing international law of the highest value. Moreover, by applying international law in a spirit of progressive realism, the Court has become one of the chief agencies for the gradual development and growth of international law.⁵ The fact that its decisions are only binding on the parties to any particular dispute, and that its advisory opinions do not bind anyone, is a blessing in disguise. It means that, as an interpreter of international law, the Court must rely on the persuasive authority of its decisions and opinions.

Consciousness on the part of most members of the Court of these limitations of the Court's powers serves as a salutary brake against any temptation to make the law rather than to declare it. Irrespective of the political importance of issues which are submitted to the World Court, it can fulfil the tasks of stating and imperceptibly developing international law; for the legal importance of a case is fortunately unrelated to its political insignificance. The only real tragedy would be if the stream of cases submitted to the Court should ever entirely cease to flow, and its members be condemned to be the world's most highly paid unemployed.

POLITICAL DISPUTES

The real test of any collective system for the pacific settlement of international disputes lies in the field of political conflicts. No inherent characteristic distinguishes this type of dispute from those of a legal nature. Disputes are political for one of three reasons. States may be convinced that international law is too rudimentary or limited in scope to provide any adequate solution. They may consider a settlement on the basis of international law to be contrary to their conceptions of international morality. Finally, they may realise only too well the weakness of their case in law and equity

² See below, p. 665 *et seq.*

³ See above, p. 881 *et seq.*

⁴ See below, p. 621 *et seq.*

⁵ See below, p. 621 *et seq.*

and, therefore, be unwilling to accept the decision of an impartial and authoritative body such as the World Court.

Comparison of the Charter with the Covenant. The United Nations and League systems for the pacific settlement of political disputes have three essential features in common.

First, they provide for the possibility of collective discussion of political disputes and of investigation into the facts and merits of such conflicts. They even authorise the conciliation organs to make recommendations to the parties regarding the settlement of their disputes. Neither the Charter nor the Covenant, however, has endowed these bodies with the power of making binding decision. Resort to conciliation is made obligatory. Acceptance of any proposals made by the conciliatory organs remains optional.

Under the Covenant, compliance by a party with unanimously adopted recommendations of the Council, or of a majority of the Assembly, including the members represented on the Council, had at least some significance. None of the members of the League was entitled to go to war with such a State in circumstances in which members of the League would, otherwise, have been free to do so. Under the Charter, war, except in self-defence, is illegal. Such a proviso, therefore is no longer required.

Secondly, matters within the domestic jurisdiction of States are in principle excluded from the jurisdiction of the collective organs. Compared with the Covenant, this principle is formulated more widely and absolutely in the Charter of the United Nations.

Under Paragraph 8 of Article 15 of the Covenant, it was left with the parties to a political dispute to raise the objection that the dispute had arisen out of a matter which 'by international law is solely within the domestic jurisdiction of that party'. If the Council found the exception to its jurisdiction justified, it was not to make any recommendation regarding the settlement of the dispute. In proceedings under Article 11 of the Covenant, this reservation did not apply.

In the Charter the principle of respect for the domestic jurisdiction of States is formulated as a general principle (Paragraph 7 of Article 2). The United Nations must not intervene in matters which are 'essentially within the domestic jurisdiction of any State', and Members are not required to submit such matters to settlement under the Charter. The only exception that is made is in favour of the application of enforcement measures under Chapter VII. Where the Covenant spoke of 'solely', the Charter extends the reservation to any matter which is 'essentially within the domestic jurisdiction of a State' and omits the yardstick of international law by reference

to which the sphere of domestic jurisdiction was determined in the Covenant.

Thirdly, both the Charter and the Covenant are designed in such a way as to give reality to the principle of functional universality⁶ in the field of conciliation. Article 17 of the Covenant made it the primary duty of the Council to take the initiative in inviting non-members to bring their disputes before the forum of the League of Nations. In addition, each member of the League had the 'friendly right' of drawing the attention of the Assembly or of the Council to any circumstances, including disputes, which constituted a danger to peace (Paragraph 2 of Article 11 of the Covenant). In refusing the right to non-members to take such an initiative, the Covenant was based in this field on the principle of relative rather than of absolute universality.⁷ Under the Charter, a non-member is entitled to bring before the Security Council or the General Assembly any dispute to which it is a party (Paragraph 2 of Article 35).

The differences between the Charter and the Covenant in the field of political disputes are of emphasis rather than of principle. They may be classed conveniently under five headings.

First, the Security Council has the primary responsibility for the maintenance of international peace and security. While it exercises its functions, the General Assembly may discuss such matters, but must refrain from making recommendations of its own unless the Security Council so requests (Paragraph 1 of Article 12). If the General Assembly is seized with such a matter, and any action should be required, the Assembly must refer such a question to the Security Council (Paragraph 2 of Article 11). The General Assembly may also call the attention of the Security Council to situations which are likely to endanger international peace and security (Paragraph 3 of Article 11).

Compared with this rather subordinate position of the General Assembly in the system of the Charter, the theory of the League of Nations rested on the idea of parallel competences of the Assembly and Council. Each of the parties to a dispute which had been submitted to the Council could even insist on the transfer of the case to the Assembly (Paragraph 9 of Article 15 of the Covenant).

Secondly, the Charter of the United Nations offers greater opportunity than did the League Covenant for a legalistic interpretation of the rights and duties of parties to political disputes.

The draftsmen of the Covenant practised more successfully the art of economy of words than their successors of San Francisco. In

the Covenant everything that mattered was compressed into three Articles (11, 15 and 17). The corresponding Articles of the Charter are spread over seven chapters, one of which is exclusively concerned with the peaceful settlement of international disputes (I: Purposes and Principles; IV: General Assembly; V: Security Council; VI: Pacific Settlement of Disputes; VII: Action with respect to Threats to Peace; VIII: Regional Arrangements and XV: Secretariat). Moreover, these Articles overlap and suffer from lack of careful co-ordination. In one instance, there is even an open discrepancy between the four texts. This was first spotted by Dr. Salomon in his suggestive work on *L'ONU et la Paix* (1948). The English, French and Chinese versions of Article 37 contain an innocuous reference back to Article 36 of the same Chapter. The Russian text, however, strikes a more militant note in referring to Article 39 of Chapter VII of the Charter (Cmd. 7015—1946).

Some of the obscurities in drafting have made it easier than it would otherwise have been for members of the United Nations to clothe obstructiveness with the garb of legal argument. The Soviet representatives on the Security Council have developed this technique into a fine art. Yet even they have found themselves completely outclassed by Professor Kelsen's exhaustive scrutiny of the text of the Charter. His minute analysis has unearthed a plethora of contradictions in the relevant articles of the Charter (*The Law of the United Nations*, 1950). With a modicum of goodwill, all these discrepancies can be co-ordinated with ease. In the absence of such a spirit which is normally limited to one season of the year, such blunders in legal draftsmanship are handy spanners to be thrown at will into the United Nations machinery of conciliation.

Thirdly, the Charter thrusts greater responsibility on the parties than did the Covenant to settle their political disputes among themselves.

Members of the League were not under any obligation to adjust their political conflicts. They remained free to leave them unsettled. Only if a dispute was likely to lead to a rupture of diplomatic relations between them, were they committed to take one of two courses. Either they had to submit such disputes to arbitration or judicial settlement or they had to agree to an inquiry by the Council. Each party could unilaterally set such an inquiry into motion. In this case, the Council and the Assembly had no alternative. The League organ to which one of the parties referred such a dispute had to take action under Article 15 of the Covenant.

Members of the United Nations, too, may do as they like as long as they are prepared to leave their political disputes unsettled. If,

however, they desire to raise such issues, Paragraph 3 of Article 2 limits their freedom of action by prescribing that they must settle international disputes, as distinct from matters essentially within their domestic jurisdiction, by peaceful means only. Read in conjunction with Paragraph 4 of the same Article, this excludes the application of compulsory measures of a military character short of war, such as pacific blockades or other forms of military reprisals.

Even if the continuance of a dispute might endanger the maintenance of international peace and security, the parties are enjoined by Article 33 of the Charter to rely primarily on peaceful means of their own choice. These are enumerated exhaustively in the Charter: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements. If the parties should fail to reach a settlement by any of these means, they are under an obligation to refer the dispute to the Security Council (Paragraph 1 of Article 37).

In the case of a dispute, which is likely to endanger the maintenance of international peace and security, the Security Council may intervene at any stage, but it is not bound to do so (Paragraph 1 of Article 36). In either case, the primary function of the Security Council is not itself to make recommendations for the actual settlement, but to recommend to the parties appropriate procedures or methods of adjustment (Paragraph 1 of Article 36 and Paragraph 2 of Article 37). The recommendation of terms of settlement by the Security Council itself is only mentioned as the second alternative in Article 37 of the Charter.

On the face of it, Article 34 grants power of investigation to the Security Council only for a limited purpose. The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute 'in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security'.

The jurisdiction of the General Assembly regarding political disputes is defined in more liberal terms. Under Article 10 of the Charter, the General Assembly has a general power of recommendation and, in accordance with Article 14, it may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations.

Fourthly, the standards which the organs of the United Nations have to apply in making recommendations to the parties show some variation.

The Council and the Assembly of the League of Nations were

charged with the duty of making recommendations which were 'deemed just and proper'. Under Paragraph 2 of Article 37 of the Charter, the Security Council may recommend 'such terms of settlement as it may consider appropriate'. This discretionary power, however, is limited by Article 2 which determines the action both of the organs and of the members of the United Nations. According to Paragraph 3 of this Article, the recommendations of the Security Council must not endanger 'international peace and security, and justice'.

The reference to justice was included in Paragraph 3 on the initiative of Committee I (1) of the San Francisco Conference. Presumably, the members of the Committee had in mind extreme cases of unjust settlements during the inter-war period, such as in the cases of the Corfu Dispute between Greece and Italy (1923) and of the Munich Settlement (1938). Although the League of Nations was not responsible for either of these, the United Nations was to refrain from mere appeasement⁸ of the greater powers.

Actually, the differences between the standards laid down in the Covenant and Charter are merely nominal. These standards are too vague and subjective to be applied with any degree of certainty in individual cases. What, in terms of the world or of continents, may be in the interest of justice and security, may be a travesty of justice in the eyes of one or of both of the parties directly concerned. Moreover, who can say with any claim to authority how, in any concrete case, requirements of justice and security should be balanced against each other? Even if, in the spectator's view, these collective organs should have ignored in any particular recommendation both justice and security, *quis custodiat custodes*? In fact, political bodies, which are limited only by such vague standards, have a practically unlimited discretion.

Fifthly, voting procedures different from those under the Covenant apply when the Security Council and the General Assembly act as organs of conciliation.

Voting in the League Council under Article 15 of the Covenant was based on the principle of qualified unanimity. All members of the Council, including parties to the dispute, had the right to vote. Members not represented on the Council who submitted cases to the Council, and non-members who accepted the Council's invitation to submit to its jurisdiction, were treated as Council members for the purposes of such disputes.

In computing unanimity, Paragraph 6 of Article 15 of the Covenant permitted the votes cast by parties to a dispute to be left out

⁸ See above, p. 197.

of account. To exclude the parties from voting would have amounted to an additional 'derogation from the essential principles of unanimity and of the equal rights of members' of the Council (The Permanent Court of International Justice in the *Mosul* case—1925). Article 15 of the Covenant did not contemplate so extensive an application of the rule that no one should be judge in his own suit.

Voting in the Security Council in matters connected with the pacific settlement of disputes follows the general rules on voting in the Council. With one exception, the principle of qualified majority applies to all votes of substance. Paragraph 3 of Article 37 provides that in decisions—actually recommendations—of the Security Council under Chapter VI of the Charter and under Paragraph 3 of Article 52 (reference of a dispute by the Security Council to a regional agency), parties to a dispute shall abstain from voting.

When the Security Council has before it a situation—as distinct from a dispute—which might lead to international friction, all members of the Security Council are entitled to vote until it is found that the situation amounts to a dispute. The Charter remains silent on the question who decides on whether a set of facts constitutes a situation or a dispute.

The Assembly of the League of Nations was authorised to make recommendations under Article 15 of the Covenant by a majority vote of its members. The majority, however, had to include all the members represented on the Council. As in the Council, the votes of the parties were ignored. It was controversial whether recommendations of the Assembly under Article 11 required unanimity. The General Assembly of the United Nations makes recommendations regarding the pacific settlement of international disputes by a two-thirds majority of the members present and voting.

The Practice of the League of Nations and of the United Nations. For the student of international institutions, acquaintance with the legal skeleton of an international institution necessarily forms the starting point for his own specific inquiries. What matters very much more to him, however, is how such a system works in practice. What is the real significance of formal reservations, such as that of matters essentially within the jurisdiction of a State or of the veto power of the world powers? What kind of disputes have been actually settled by the conciliatory organs, and still more important, what disputes have been kept away by the powers from scrutiny by the collective system? Finally, to what uses have these procedures been put by States which are not directly concerned in such disputes, but which, in their capacity as members of such collective organs, may have an interest in their settlement?

A good many of these questions will answer themselves without undue difficulty, if it is realised that the conciliation procedures of the League of Nations and of the United Nations give ample scope for the application of the ordinary international tactics of power politics.⁹ All that the members of a collective system such as the United Nations have done is to renounce the use of tactics which are incompatible with a state of peace, that is to say, military measures short of war and war itself. Furthermore, they have agreed that any threat to peace is a matter which concerns every one of them. Thus, conciliation by League or United Nations organs means nothing more than generalisation of customary devices, such as negotiation, good offices, mediation and inquiry.

In informal ways, even the Concert of Europe had widely employed such techniques in the interest of maintaining the peace of Europe. It succeeded whenever there was harmony within the international oligarchy, or at least when none of its members was willing to prefer war to some sort of peaceful adjustment. Accord could be most easily achieved when a minor dispute arose that did not seriously affect the prevailing balance of power. In the hierarchy of States, which existed in the pre-1914 period, disputes of this kind were mainly conflicts between small States. In this field, the Concert of Europe was eminently successful. It was also able to fulfil the function of peace-maker in disputes in which greater powers were involved if one of these had manoeuvred itself into a position of relative isolation. When, as in 1914, the odds appeared to be more even the Concert became a cacophony.¹⁰

Thus, what appears to matter most is not the subject-matter of any dispute, but the relative position of the parties in the hierarchy of States. There is an additional reason why the division according to this criterion of disputes into various categories recommends itself. The main object of the United Nations, as of the League of Nations, is the maintenance of world peace. As long as the greater powers are determined to maintain peace, it is unlikely to be seriously disturbed by brawls between small States. The real issue is whether the world powers are able to control themselves and each other.

Disputes between Small States. The League of Nations and the United Nations have striking successes to their credit in disputes between small States. Owing to the compression of the international hierarchy which has taken place since the inter-war period, disputes of small States with middle powers or between middle powers, too, may be included in this category. Yet this is not to say that either

⁹ See above, p. 191 *et seq.*

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system has brought to a constructive conclusion all or most disputes of this kind.

The dispute between Finland and Sweden over the Aaland Islands (1920) and the Greco-Bulgarian frontier conflict (1925) showed the League of Nations at its best.

Great Britain brought the dispute over the Aaland Islands to the attention of the League Council under Article 11 of the Covenant. At that time, Finland was not yet a member of the League of Nations, but accepted the Council's jurisdiction. Sweden was anxious that the Aaland Islands should remain non-fortified and neutralised, and, in accordance with the principle of national self-determination, the predominantly Swedish population of these islands wished to be united with Sweden.

The case raised far-reaching legal and political issues. Was the Convention of March 30, 1856 between France, Great Britain and Russia regarding the Aaland Islands still in force? Had Finland acquired sovereignty over the Aaland Islands? If so, was she bound under international law to accept as successor to Russia the obligations which Russia had undertaken as part of the peace settlement of 1856? Moreover, was the question of the treatment of the population of the Aaland Islands not a matter which, under Article 15 of the Covenant, was exclusively within the domestic jurisdiction of whoever was the sovereign of these Islands?

In this case the Council was advised both by a Committee of Jurists and by a Committee of Rapporteurs, composed of members with primarily political and diplomatic experience. The Report of the Committee of Rapporteurs contradicted that of the Committee of Jurists in its basic legal assumptions and provided for an equitable settlement. This proved to be acceptable to the Council including the parties to the dispute. Finland's claim to sovereignty over the Aaland Islands was recognised, but her sovereignty was seriously limited. The principles of the Convention of 1856 were reaffirmed. Moreover, Finland had to grant a wide autonomy to the inhabitants of the Aaland Islands.

How is this success of the League to be explained? In the first instance, the League confirmed the position of the power which was effectively in control of the Aaland Islands. It, thus, avoided the difficulties of a recommendation which would have involved either Finland's voluntary withdrawal or her forcible eviction. The settlement was based on the principle of least resistance. Secondly, Finland was one of the vital elements of the anti-Soviet front in Eastern Europe. The Report of the Commission of Rapporteurs of 1921 was rather indiscreet on this point:

has thus avoided an expansion of the revolutionary Russian movement in Europe and, in particular, in Scandinavia. It would be hard to wish to thank her by depriving her of territory which she thinks essential. Whatever may be the future of Russia, there is interest in hastening the consolidation of Finland which has been constituted on the debris of the Russian Empire.'

Thirdly, by accepting the limitations of sovereignty which had been imposed on Russia in 1856, Finland met the British interest in the freedom of the seas and, thus, secured Great Britain's goodwill. In these circumstances, Sweden had to be content with a regime that safeguarded the ethnical integrity and cultural autonomy of the inhabitants of the Åland Islands.

Another show case of the League of Nations was the dispute between Bulgaria and Greece of 1925. This arose out of a quarrel between Bulgarian and Greek sentries and led to the invasion of Bulgaria by two Greek army corps. Bulgaria appealed to the League under Articles 10 and 11 of the Covenant.

Briand, at the time President of the Council, took immediate action. His stern telegram, addressed to both parties, deserves to be quoted in full :

'The Secretary-General, acting under Article 11, has convoked a special meeting of the Council on Monday next in Paris. The Council at that meeting will examine the whole question with representatives of the Bulgarian and Greek Governments. Meanwhile, I know my colleagues would wish me to remind the two Governments of the solemn obligations undertaken by them as members of the League of Nations, under Article 12 of the Covenant, not to resort to war, and of the grave consequences which the Covenant lays down for breaches thereof. I therefore exhort the two Governments to give immediate instructions that, pending the consideration of the dispute by the Council, not only no further military movements shall be undertaken, but the troops shall at once retire behind their respective frontiers.'

The Commission, which the Council established for the settlement of the conflict, consisted of a British ambassador, a Swedish diplomat, a Netherlands member of Parliament, and a French and Italian general. Its tasks were to investigate the causes of the incident; to fix responsibility for the violation of the frontier; to assess the damages which were due from the guilty party, and to make proposals for the avoidance of further disturbances. The Commission fulfilled its triple functions of investigation, of quasi-judicial reporting and of making constructive suggestions for the future to the satisfaction of all concerned.

The Council hardly treated the disputants as being on a footing of equality with the other members of the Council. It addressed to both States peremptory requests; impatiently waved aside Greek

attempts to justify her invasion of Bulgarian territory on grounds of reprisals, and fully succeeded in restoring peaceful relations between the two contestants.

How is this apparent miracle to be explained? The greater powers were resolved on preventing another Balkan war, and both France and Great Britain had made it clear through authoritative spokesmen, Briand and Sir Austen Chamberlain, that they were not prepared to stand any nonsense from two small States playing with war. Finally, in substance, the two parties were only asked to restore the status quo ante, and Greece had merely to pay reparations for her breach of this status quo.

Yet, even in disputes between small States, the League of Nations did not always cut so favourable a figure.

In 1920 Poland had the effrontery to seize Vilna, the ancient capital of Lithuania, by force. The Polish Government knew that, in taking this step, it was contravening a decision of the Supreme Council which had defined Poland's frontier in the East in accordance with the so-called Curzon Line. This had left Vilna outside Polish territory. The Polish Government, however, knew equally well how hesitant France and Great Britain were to accept any additional military commitments in Eastern Europe.

Although France dissociated herself formally from the Polish *fait accompli*, behind the scenes she did everything she could to assist her Polish ally. On the diplomatic front, the Quai d'Orsay skilfully used the anti-Soviet argument: Poland was valiantly fighting the common enemy, the Soviet Union. What purpose could be served by weakening this outpost of European civilisation?

Once the Polish Government knew how the wind was blowing, it eagerly put the dispute with Lithuania before the Council of the League under Article 11 of the Covenant. In doing so, the Polish objective was to prevent Lithuania from resorting to war against her. With the Council's connivance, Poland used the Covenant in order to prevent the victim of her aggression from retaliating in kind, while she was engaged in her Holy War against the Bolshevik arch-enemy.

Stealing another country's capital was bad enough, but Lithuania's seizure of the Memel Territory was not different in kind from Poland's high handed action over Vilna. Still more ridiculous was the jungle war in the Gran Chaco between Bolivia and Paraguay; for the warring nations had even to import their arms from the United States or from other members of the League of Nations. Ultimately, peace was imposed by the neighbouring States, and the active participation of the League of Nations, in bringing this war to an end.

In each of these cases it is possible to find special arguments which exculpate the failure of the League of Nations. It appears fair to summarise the League experience in the settlement of disputes between small States in this way: when the area of conflict was within the reach of the greater League powers, and these were sufficiently interested in bringing the disputing States together, such conflicts proved to be amenable to peaceful settlement. If one of these conditions was lacking, the League presented a pathetic example of collective impotence behind unimpressive torrents of words, streams of resolutions and mountains of paper.

The first quinquennium of the United Nations reveals a somewhat similar picture.

The settlement of the Indonesian dispute with the active assistance of the United Nations is a reminder of the adjustment of the dispute over the Aaland Islands by the League of Nations. On the two occasions when the question of Indonesia was brought before the United Nations, in 1946 on the initiative of the Ukraine and in 1947 on that of India, the Netherlands raised a plausible objection. She maintained that under Paragraph 7 of Article 2 of the Charter, the United Nations was not entitled to interfere in this matter which was essentially within her own domestic jurisdiction. In both cases, the Security Council ignored this plea.

The Security Council called upon the parties to cease hostilities forthwith, to settle their dispute by peaceful means and to keep it informed of their efforts to this end. Beyond this, the Security Council asked the members of the Council who had career consuls at Batavia to prepare jointly reports for the Council on the observance of the cease-fire orders and on conditions in the areas under military occupation.

The governments of The Netherlands and of Indonesia were requested to grant to the Consular Commission all the necessary facilities for the fulfilment of its task. In agreement with the parties, the Security Council further appointed a Committee of Good Offices, composed of three members of the Council. There is little doubt that the active interest taken by the United Nations in the fate of the Indonesian Republic assisted materially in the ultimate settlement of the dispute and in the creation of a more than nominal Netherlands commonwealth.

The reasons why this, from the legal point of view, rather controversial intervention of the United Nations was successful are of a complex character. The Soviet Union championed the Indonesian Republic as part of her 'anti-imperialist' offensive against the Western powers in Asia. The United Kingdom counselled caution ;

for Dutch stubbornness might have undone her own work of patient conciliation in India, Burma and Ceylon. The United States Government shared British anxieties, but was still the prey of anti-imperialist suspicions regarding the older colonial powers. In any case, any claim that could be based on the principle of national self-determination was bound to appeal to wide sections of American public opinion.

Only France proved restive. Every argument that established the competence of the United Nations in the case of Indonesia might have formed a precedent for United Nations meddling with her own colonial war in French Indo-China. Thus, when, in 1947, the Soviet Union proposed by way of an amendment to a resolution before the Security Council that, instead of the Consular Commission, a fully representative commission, established by the Security Council, should enforce the Council's cease-fire orders, France defeated this amendment by the exercise of her veto. The Indonesian leaders, too, had reasons of their own for agreeing to an honourable compromise. Their own Communist supporters had turned into enemies who fought the Indonesian Republicans as bitterly as the Dutch.

It is more dubious whether the settlement of the war in Palestine may be credited to the United Nations. In the last phase of the British Mandate,¹¹ Mr. Bevin did his best to live up to the maxim: *Après nous le déluge*. Thus, in its Report of April 10, 1948 the Palestine Commission of the United Nations described the British attitude as a 'serious jeopardy to the discharge of the Commission's responsibilities'. Yet while the vacuum created by the British withdrawal was soon filled by the clash of arms, the General Assembly busied itself with the approval of successive blue prints regarding Palestine. It did not unduly concern itself with a minor flaw in each of them: who was to enforce these day-dreams? The Trusteeship Council, which was entrusted by the General Assembly with the thankless task of working out a plan for the *corpus separatum* of Jerusalem, did not fare any better. At intervals, the Security Council, too, made its voice heard.

On this level, Mr. Bevin had scored a unique success. He became the architect of agreement between the United States and the Soviet Union, albeit only over Palestine and against his own country. Yet when all due praise is given to the unstinted efforts of Count Bernadotte, Dr. Bunche and to the other devoted field workers of the United Nations, the result is plain.

The United Nations had to be content to let the parties on the spot fight out their quarrel and to await a local balance of power.

When the disunited Arab forces inside Palestine were in full flight and the invasion armies of five members of the United Nations—Egypt, Iraq, Lebanon, Syria and Saudi Arabia—were in danger of annihilation, the chance of the collective system had come. Israel could defy the United Kingdom, but not simultaneously the United States and the Soviet Union. The United States began to realise that a complete rout of the Arab armies would put an end to the rather shaky system of security which Great Britain had built up in the Near East, and might be the beginning of social revolution in this area. To avoid this had become a joint British-United States interest; for the Soviet Union was bound to be *tertius gaudens*. Soviet interest in Israel, too, had given way to a more critical attitude. Israel proved to be impermeable to the lures of Communism, modelled herself increasingly on Labourite Britain and left little doubt that, while she appreciated the supply of arms from any quarter, she was not going to be an outpost of the Soviet Union in the Eastern Mediterranean.

Against this background, the cease-fire and truce Resolution of the Security Council of May 29, 1948 was adopted and accepted by Israel and the members of the Arab League. The United Nations, however, could do little to prevent subsequent breaches of the truce by both sides. In the end, it had to leave Israel and Jordan, the two locally decisive factors, to work out between themselves a *modus vivendi*. Israel's admission to the United Nations, with Jordan being left in the cold, crowned a nationalist Zionist policy which was hardly based on either the Sermon on the Mount or on the principles of the United Nations, but which was fully in accordance with the harder ethics of the Old Testament and with the age-old practices of Christian and non-Christian nations alike.

Counterparts to failures of the League of Nations in settling disputes between small States are certainly not lacking in the practice of the United Nations.

The absorption of Hyderabad by India in 1948, whether described as an act of aggression or as mere internal police action, need only be mentioned in passing. It may be a matter of argument whether, in the relations between India and Hyderabad, this dispute should not be more accurately described as one between a greater power and a helpless small State. The one point, however, which is uncontroversial and essential in this context is the opportunism with which the Security Council acquiesced in the Indian *fait accompli*.

On a world scale, the Kashmir dispute between India and Pakistan is more serious. Over a prolonged period, all that informal discussions within the British Commonwealth and more formal

efforts on the level of the United Nations have achieved is the continuance of a precarious truce, accompanied by a trade war and ruinous rearmament in India and Pakistan. The one vital issue, a free plebiscite, in Kashmir, and partition of the territory in accordance with the results of the plebiscite, has been continuously shelved.

So far, the attitude taken by the Security Council may be explained on grounds of hopes that the parties themselves will reach a peaceful settlement of the issue. The public exchanges between Pandit Nehru and the Prime Minister of Pakistan in February, 1950 were not encouraging. While the Indian Prime Minister assured his audience in a phrase with a rather ominous ring, that his patience would not last indefinitely, his counterpart in Pakistan assured his followers that 'if India wants war she will find us fully prepared'. Both leaders, however, realised that matters could not be allowed to drift any further and tried to stop the drift to war by direct agreement on the main issues which were outstanding between their countries.

Once they had created this basis for agreement, the Security Council could be helpful and, by the appointment of an Australian mediator, even make use of the integrating forces within the British Commonwealth. At a moment when Soviet penetration into Sinkiang intensified and Chinese infiltration into Tibet commenced, no time was to be lost. After several months of tireless attempts to bring the two parties together by Sir Owen Dixon, the United Nations representative in the Kashmir Dispute, this experiment in conciliation, too, failed and, in April, 1950, the mediator handed back his unfinished task to the Security Council. It took the Security Council nearly a year to take any further action. On Anglo-American initiative, it recommended to the parties to try their luck with mediation yet again and to settle any questions not amenable to such treatment by way of arbitration.

The case of the Greek complaint in 1946 to the Security Council regarding the support granted by Greece's neighbours to the Greek Communists was only in form a dispute between small States. In substance, it was a conflict between the world powers.

The Security Council appointed a Commission of Investigation which was composed of representatives of each of the members of the Security Council. In due course, it presented to the Council majority and minority reports with diametrically opposite conclusions. The majority (Australia, Belgium, Brazil, China, Colombia, Syria, the United Kingdom and the United States) held that Yugoslavia and, to a lesser extent, Albania and Bulgaria have supported the guerrilla forces in Greece. In the opinion of the United States and of the Soviet

Union the Greek allegations against her neighbours were 'absolutely unfounded', and the war in Greece was a genuine civil war. Neither the Security Council nor the General Assembly, to which the dispute was referred in 1947, materially contributed to the settlement of the conflict.¹² It was the assistance given to the Greek Government by the United States, and the closure of the Yugoslav frontier to the Greek rebels which enabled the Greek Government to dispose of its internal opponents in the field.

Disputes between Greater Powers and Small States. In disputes between a greater power and a small State the chances of a collective system of the League of Nations type depend on the attitude of the greater power concerned and on the general constellation between the greater powers.

The Mosul dispute (1925) between Great Britain and Turkey involved important strategic and economic issues. The commission appointed by the League Council, and consisting of Belgian, Hungarian and Swedish members, did not find it unduly difficult to propose an acceptable settlement. In its report, it analysed the problem from the historical, ethnical, strategic and economic angles. As both Great Britain and Turkey had decided to submit to the Council's verdict, the League of Nations emerged triumphant from this affair.

In the Corfu case (1946—decided by the World Court in 1949), the United Kingdom showed a similarly conciliatory attitude and even consented to have the dispute treated as a legal dispute.¹³

How different the situation is when the greater power involved is less reasonable may be seen from two other cases.

In the Corfu dispute (1923) between Greece and Italy, Mussolini studiously ignored Greek suggestions for settlement by the League of the basic question, that is to say, Greek responsibility for the death of an Italian General who had been a member of an international commission for the delimitation of the frontier between Albania and Greece. Italy desired victory without war and chose, by way of reprisals, to bombard the old fortifications of Corfu, in which, at the time, some Armenian refugees were housed.

A Committee of Jurists was appointed by the League Council to advise on the compatibility of military reprisals with the duties of League members towards each other. Its opinion was in the best tradition of the Delphic oracle and amounted to the statement that such reprisals might, or might not, be legal.

The Council was not prepared to apply the Covenant against Italy. It abdicated its functions to the Ambassadors' Conference

¹² See above, p. 414.

¹³ See above, p. 463.

which had established the frontier commission. This body imposed on Greece terms which added Allied injustice to the Fascist insult.

Although the story had a different ending, the dispute between Persia and the Soviet Union (1946) belongs in the same category. Little doubt existed that the continued presence of Soviet troops in Persia constituted a breach of Soviet treaty obligations and of subsequent promises made to the United Kingdom. The ultimate withdrawal of the Soviet forces from Persia, however, was not primarily due to the Security Council, but to the resolve of the United Kingdom and of the United States to achieve this result at whatever cost.¹⁴ This dispute was only in form a dispute between a greater power and a small State. In substance, it was a conflict between the Big Three.

Disputes between Greater Powers. In passing to the last category of disputes, that is to say, disputes between the greater powers, the relevance of the collective systems of 1919 and 1945 drops to zero. In form, the disputes between China and Japan (1931) and between Ethiopia and Italy (1935) were disputes between small States and the greater power aggressors. In substance, however, they were as much conflicts between the greater powers as was the German aggression against Poland of 1939. In the two former cases, collective action amounted to fierce words and pious resolutions. In the last-mentioned case, France and Great Britain no longer considered it worth while even to set the League machinery into motion. Theoretically, this would have been possible; for, in spite of having left the League, Germany as a party to the Peace Treaty of Versailles was still bound by the provisions of the Covenant.

If any more evidence is needed that in a dispute between the world powers, the United Nations could function no more effectively than the League of Nations it was furnished by the conflict over Berlin (1948). The Western powers submitted this case to the Security Council under Chapter VII of the Charter. Nevertheless, it is relevant to mention it here; for, in the view of Professor Jessup, the United States representative in the Security Council, the reference of a case to the Security Council under this Chapter does not only raise the issue of sanctions, but also 'opens the door to the selection of any kind of effort towards a peaceful solution'.

In the end, the Soviet veto closed this door with a bang, and the world powers were left with the devices of pre-1914 diplomacy: acquiescence in the existing *de facto* situation, diplomatic accommodation of the dispute or war. The success of the Anglo-American effort and the switch-over in the Soviet offensive from Europe to the Far East enabled both sides to agree to temporising measures.

Comparison of the Practice of the United Nations with that of the League of Nations. The differences between the practice of the United Nations and that of the League of Nations in the field of political disputes are less important than their common weaknesses. None the less, they have their significance. They throw additional light on important changes in international society and ideology since the inter-war period.

First, the United Nations has attained relative universality.¹⁵ All the world powers and middle powers are members of the United Nations. Compared with the League of Nations, the United Nations is in an enviable position. The non-membership of the Soviet Union and of the United States was a serious handicap for the League in the Sino-Japanese dispute.¹⁶ In the dispute between Bolivia and Paraguay the duplication of agencies sponsored by the League of Nations and by the United States for the composition of this conflict may have been partly responsible for the delay in terminating this war.¹⁷ In the case of the Italo-Ethiopian War, however, the non-universality of the League of Nations was more an excuse than a real deficiency of the collective system.¹⁸ The United Nations does not suffer from this real or alleged weakness of the League nor can it fall back on this somewhat specious apologia.

Secondly, members of the League of Nations preferred the Council to the Assembly as the collective organ for conciliation. As the majority vote of the Assembly on recommendations under Article 15 of the Covenant had to include the members represented on the Council, little was to be gained from referring a dispute from the Council to the Assembly. The Assembly could do nothing that could not be done better by the Council. Being a more compact body, the Council was less cumbersome to handle and it could be summoned with greater expedition. The reference of the Sino-Japanese conflict to the Assembly in 1932 confirmed the pointlessness of this procedure. The Assembly, like the Council, spent its time in searching for face-saving formulae and in avoiding any semblance of collective action.

The situation in the United Nations is rather different. The Western powers have normally at their beck and call comfortable working majorities in both the Security Council and in the General Assembly. In the Security Council these can be stultified by the Soviet veto in the case of proceedings under Chapter VI in all disputes to which the Soviet Union herself is not a party.

¹⁵ See above, p. 436 *et seq.*

¹⁶ See above, p. 300 *et seq.*

¹⁷ See below, p. 496.

¹⁸ See below, p. 497 *et seq.*

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¹⁵ See above, p. 436 *et seq.*

¹⁶ See above, p. 300 *et seq.*

¹⁷ See below, p. 496.

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If a representative of Communist China were to join the Security Council, even this nominal restriction upon Soviet freedom of action would disappear. It would be one of the ironies of history if China should come to exercise a deputy veto for the Soviet Union; for when, against British doubts on the wisdom of elevating China to the position of a permanent member of the Security Council, President Roosevelt insisted on this course, he advanced the argument that 'China, in any serious conflict of policy with Russia, will undoubtedly line up on our side' (Hopkins' Memorandum on the Anglo-American Conference of March 27, 1943—*The White House Papers of Harry L. Hopkins*, vol. 2, 1949).

On the face of it, the chances for a constructive solution of any dispute in the General Assembly are more promising. The General Assembly may discuss and make recommendations with a two-thirds majority on any question relating to the maintenance of international peace and security. The sole proviso regarding this practically unlimited jurisdiction is that the General Assembly must refrain from making recommendations of this character while the Security Council is seized of such a matter, unless the Security Council so requests. Even then, however, the General Assembly is free to discuss such topics. Thus, the question of Palestine was before the Security Council and the General Assembly simultaneously.

By the exercise of its veto, any of the permanent members of the Security Council may stop a request being made to the General Assembly to make recommendations to the Security Council on the settlement of any particular dispute. The same applies to resolutions transferring such matters from the Security Council to the General Assembly. The Soviet Union, however, has acquiesced in a practice which allows the same result to be achieved by a procedural device. A dispute may be removed from the agenda of the Security Council by a procedural vote. The General Assembly is then free to consider such a situation or dispute. In fact, the stalemate reached by the random use of the veto by the Soviet Union in the Security Council has shifted the emphasis from the Security Council to the General Assembly in matters affecting world peace.¹⁹ The Security Council has no longer 'primary responsibility for the maintenance of international peace and security', as had been envisaged in Article 24 of the Charter.

* The emergence of the General Assembly as an active factor in the settlement of political disputes has encouraged the formation of groups of States which know the price of their combined votes in order to make or mar a two-thirds majority. The Latin American

¹⁹ See below, p. 743 *et seq.*

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States and the Levantine-Arab countries have acquired a special reputation for hard bargaining. Potentially, there is also an ex-colonial and anti-imperialist group of States which is open to seduction by the Soviet *bloc* or, at least, is willing to engage in ostentatious flirtation with it. This tendency became evident in the cases of the treatment of Indians in South Africa (1946), of Indonesia, Palestine and of the Italian colonies.²⁰

As long as the world powers are content to allow issues to be settled on this make-believe plane, combinations of small States become a factor which must be taken into account. This even applies in their relations to greater powers if these happen to be of the more accommodating type. The case brought before the Security Council in 1947 by Egypt against the United Kingdom is a glaring example of the latitude enjoyed by such States. In this case, the treaty rights of Great Britain under the Anglo-Egyptian Treaty of Alliance of 1936 were clear beyond doubt. The United Kingdom even consented to commence talks on the revision of the treaty ten years before she was bound to do so. Nevertheless, Egypt considered it advisable to raise this issue and to fortify herself against Great Britain by the support of the Soviet *bloc*.

Thirdly, the tension between East and West has left its impact on the use of the procedures for the pacific settlement of political disputes under the Charter. There is much less informal contact between the world powers on any issue in the United Nations than there was between the leading members of the League. Each side enjoys itself with dragging the other before the forum of world public opinion, and the tit for tat inevitably follows.

It suffices to mention one of these cases. The Soviet Union suspected Great Britain of having instigated Persia to raise the question of Soviet troops stationed there. She retaliated by not only raising one but two issues which could be dressed up as being in the same category: the presence of British troops in Greece and Indonesia. The fact that Soviet troops stayed in Persia against the will of the small State concerned, while British troops were in Greece and Indonesia with the consent, and at the request, of the governments of these countries, were in the eyes of the Soviets minor technicalities which could safely be ignored.

In these circumstances, both sides showed a growing willingness to apply the maxim: 'right or wrong, my satellite'. League practice, too, had not been entirely free from this habit. France, in particular, tended to make herself the champion of her outposts in Eastern Europe. On a variety of occasions, Poland benefited from this

²⁰ See below, p. 671 *et seq.*

protection. This partisan attitude was still more marked in the dispute between Hungary and Yugoslavia, following the assassination of King Alexander of Yugoslavia at Marseilles. In the course of the discussion on this dispute, in the League Council in 1934, Laval began his speech with these words: 'In this serious debate, France stands by the side of Yugoslavia.'

Yet in the practice of the United Nations, instances of open partiality are much more numerous. Whenever the Greek question was before the Security Council, Western and Eastern powers vied with each other in displaying their particular brand of bias. The United Kingdom fell as softly over the repeated provocations and breaches of the truce in Palestine of which the Arab States were guilty as did the sponsors of Israel over any corresponding action on the part of their god-child. The United States was as optimistic regarding the progress towards self-government in South Korea as was the Soviet Union over North Korea. Even so no power more consistently ignored right or wrong in any issue before the United Nations than the Soviet Union. It did not matter whether satellites had violated the Peace Treaties of 1947, whether they had shed the blood of an Allied navy or interfered with the domestic affairs of another member of the United Nations. They acted in the interest of the Cause. Thus, according to the Soviet code of international morality, they deserved, and received, full diplomatic support from the representatives of Moscow in the United Nations.

In an international environment which is so different from anything that, in the days of wartime unity, the United Nations had envisaged, the articles of the Charter on the pacific settlement of disputes are bound to serve many other purposes than those for which they had been devised. To raise an issue in the Security Council or in the General Assembly may assist whatever propaganda campaign may happen to be opportune on the international scale. Such effort may be made to show middle powers and small States where their true friends are to be found. It may even pay to bring up a question for the sheer sake of its nuisance value.

The practice of the United Nations offers a number of instances in all three categories. Advocates of either side are only likely to differ in the illustrations which they pick from the wealth of available material. Once a dispute is before the United Nations, 'disinterested' third States have golden opportunities to decide on the use of their votes. They may do so according to the criteria laid down in the Charter of the United Nations or for other reasons which may be guessed, but which it is hard to prove.

The remarkable elasticity which, in this respect, was shown by

holders of marginal votes on the issue of Palestine appears to indicate that, in fact, the exercise of the discretion enjoyed by representatives of members of the United Nations may be influenced by many considerations. Once such a stage is reached, collective procedures for pacific settlement degenerate into novel opportunities for playing traditional tunes of international tactics on a new instrument: the collectophone.

PEACEFUL CHANGE

Procedure for the settlement of political disputes between nations is a timid acknowledgment of the existence of a fundamental problem: the need for peaceful change in a highly dynamic environment.

Such adjustments can always be attained by agreement. It depends on the parties concerned whether, and to what extent, they choose to exercise pressure in order to obtain any change in the status quo. If they decide on such a course, they may limit themselves to throwing their political and economic power into the scales. Yet they may also use the background pattern of war to further such objects or resort to war to attain what they cannot secure by peaceful means.²¹

There are cases which prove that States may show exemplary wisdom. Great Britain's cession of the Ionian Islands to Greece in 1864 is an instance of a greater power granting voluntarily to a small State what such a State could never have hoped to obtain in any other way. The agreement of 1905 on peaceful secession of Norway from Sweden is another example of a State accepting with good grace the separation of a nation which desired to live its own independent existence. Yet such cases do not present a problem.

Real difficulties arise when one State demands a change in the status quo and the other does not see its way to concede such an inroad on its rights. It may then even rely on the protection of its position by international law; for it is the primary function of international law, as of any other legal system, to protect the existing order of things.

International Law and Peaceful Change. It is widely believed that international law provides means of its own for peaceful change. Within the narrowest limits, the legal principles of the prohibition of abuse of international rights and of estoppel may contribute to this end. Considerations of justice and equity are rightly considered to be general principles of law by which rules of international customary law and treaties may be supplemented, but not modified.

²¹ See above, p. 191 *et seq.*

Yet what those who would like to use international law as an agency of change have in mind are more sweeping legal concepts, if legal concepts they are: the law of self-preservation and the law of necessity. If these notions were understood in the sense that they could override international law, whenever invoked by an interested party, this would amount to the negation of international law. If, on rare occasions, they are meant to offer a justification or excuse for the non-fulfilment of international obligations, then these principles can hardly make an essential contribution to the solution of the problem of peaceful change. In fact, the function of these principles has practically always been a very different one: to mask a *fait accompli* in the disguise of legal rectitude.²²

The same applies to a related maxim in the field of international treaties: *conventio omnis intellegitur rebus sic stantibus*. Queen Elizabeth had attempted to justify on this ground the non-fulfilment of a treaty with the United Provinces of the Netherlands: 'Every convention, although sworn, must be understood to hold only while things remain in the same state.' When, in 1870, Russia denounced the Black Sea clauses of the Peace Treaty of Paris of 1856 and, in 1908, Austria-Hungary incorporated Bosnia-Herzegovina, each of these powers invoked the handy principle of the *clausula rebus sic stantibus*. Yet, in fact, all these acts were breaches of international law which, in the two last-mentioned cases, were subsequently condoned by the other powers concerned.

Traditional international law leaves open the door to change other than by agreement by providing for the legality of any war.²³ Collective systems which attempt to outlaw war must attempt to find a more rational solution for the problem of peaceful change.

Peaceful Change in the Covenant. The draftsmen of the Covenant were aware of this issue. They realised that the procedures in the Covenant for the pacific settlement of legal and political disputes did not really solve the problem.

Members of the League of Nations were not bound to submit their legal disputes to arbitral or judicial settlement. This was a matter for agreement. In any case, a decision on the basis of international law would mean of necessity a decision against the party which asked for a change in the law. When the Statute of the Permanent Court of International Justice was drafted, a provision was inserted which, but only at the express request of the parties, authorised the Court to decide a case *ex aequo et bono*.²⁴

²² See above, p. 205.

²³ See above, p. 202 *et seq.*

²⁴ See above, pp. 230 and 460.

The provisions for the settlement of political disputes allowed for a modicum of peaceful change. Under Article 15 of the Covenant, the Council and the Assembly could make to the parties recommendations which these bodies regarded as just and proper. Such suggestions might have included proposals for revision of the existing legal position. They, however, were only recommendations and, thus, again depended on being voluntarily accepted by the parties. Furthermore, the lack of jurisdiction of the conciliation organs of the League under Article 15 of the Covenant in matters within the exclusive domestic jurisdiction of members prevented from the outset the use of this procedure on any appreciable scale for purposes of peaceful change.

The problem was tackled in a separate Article. In its original form, as proposed by Colonel House, the Article gave expression to the complementary character of stability and change in a well-balanced collective system :

‘ The Contracting Parties unite in several guarantees to each other of their territorial integrity and political independence, subject, however, to such territorial modifications, if any, as may become necessary in the future by reason of changes in present racial conditions and aspirations, pursuant to the principle of self-determination and as shall also be regarded by three fourths of the Delegates as necessary and proper to the welfare of the peoples concerned, recognising also that all territorial changes involve equitable compensation and that the peace of the world is superior in importance and interest to questions of boundary.’

In the course of the drafting, the intimate link between the joint guarantee of the political and territorial status quo and provision for peaceful change was severed.

Moreover, in its final formulation, Article 19 was reduced to practical meaninglessness. The Assembly was authorised to advise reconsideration by members of treaties which had become inapplicable and the consideration by them of international conditions whose continuance might endanger the peace of the world. Even existing international law provides that, when a treaty becomes inapplicable in the strict sense of the word, a party is freed from any obligation to carry it out. If therefore, the Article meant that a treaty might be inapplicable on grounds of justice and equity, it left this criterion completely inarticulate. Article 19 remained equally silent on what was to happen if the consideration of the treaty or of the situation in question by the parties directly concerned did not lead to any constructive solution. Finally, expert opinion widely disagreed on the voting principle that was to apply under Article 19. Advocates of revisionism argued that a vote under this Article did not amount to

a decision and that, therefore, the majority principle applied. Their opposite numbers in the camp of the status quo powers held equally firmly that Article 19 required unanimity, including the votes of the disputants.

Peaceful Change in the Practice of the Inter-War Period. Three attempts were made to put life into this Article. Bolivia submitted to the First Assembly of the League of Nations of 1920 a request for the revision of a treaty with Chile of 1904, but was discreetly prevailed upon not to insist on her demand. This might have set a dangerous precedent for requests for the revision of the peace settlements themselves. China did not fare any better when, in 1925, she invoked Article 19 in connection with her extra-territoriality treaties. At the Tenth Assembly, China suggested the appointment of a committee to examine means of giving effect to Article 19. Yet this proposal, too, was speedily sidetracked.

Thus, Article 19 merely stated an unsolved problem. If the Article had ever been applied with the unanimity of all concerned, this would have indicated that, without collective prodding, the parties directly concerned could probably have reached agreement among themselves. If unanimity was lacking, the State which desired a change would have had to be content with its moral victory, and the effect of such a vote on public opinion.

The ineffectiveness of the Covenant in the field of peaceful change did not prevent far-reaching changes of existing international treaties and of the territorial status quo of 1919 in the course of the inter-war period. They were achieved in the traditional forms of agreement or *fait accompli*.

The outstanding example is the gradual revision of the Peace Treaty of Versailles. Minor revisions were granted by the Allied and Associated Powers in the first few years of the post-1919 period. Apart from these, the history of German reparations is one long tale of revision by agreement. The Reparation Commission had fixed the total German liability at £6,600 million. The Dawes Plan constituted the first major revision of the reparations section of the Peace Treaty. In accordance with it, a United States Agent for Reparation replaced the Allied Reparation Commission. Annual payments by Germany were limited, and the payment of reparations was separated from their transfer into foreign currencies. Under the Young Plan, the total of German reparations was reduced to half the figure which had been fixed by the Reparation Commission. Finally, by the Lausanne Agreement of 1932, Germany was practically freed from her obligation to pay reparations. She agreed to a last symbolic payment of £50 million, but never honoured this obligation.

A different type of revision was heralded by Persia's unilateral denunciation in 1927 of her capitulation treaties with the Western powers. A year later, the Chinese nationalist government followed suit and announced its intention of liberating itself from the 'shackles of unequal treaties'. These acts of defiance were only the overture for the whole sequence of acts of unilateral denunciation, of *faits accomplis* and resort to force which, in the thirties, became the characteristics of Japanese, Italian and German 'revisionism'. The de facto revision of the Covenant ²⁵—in itself an illustration of peaceful change in the inter-war period—had produced a situation in which the collective system of Geneva could neither provide for peaceful change nor for collective security. Thus the problem of change was reduced to its classic simplicity in any system of power politics: revision could be obtained by agreement, *fait accompli* or war.²⁶

The United Nations and Peaceful Change. The problem of peaceful change did not greatly concern the representatives of the three powers assembled at Dumbarton Oaks. One of the paragraphs on the functions and powers of the General Assembly, however, at least contemplated that the Assembly should initiate studies and make recommendations for the purpose of 'promoting international co-operation in political, economic and social fields and of adjusting situations likely to impair the general welfare' (Chapter V B) (6)).

The question of devising procedures for the revision of treaties was considered at San Francisco. The anti-revisionist front was led by France and the Soviet Union. It was decided not to grant any express power to the General Assembly for this purpose. Although with little regard for historical accuracy, the prevailing view was forcibly expressed by the French delegate in Commission II:

'You will remember that in Article 19 of the Covenant were special provisions concerning the revision of treaties by the League. There is nothing of that kind in the Charter, and this for a very important reason: Article 19 was used by Hitler and the other dictators as a basis for their territorial claims, and if the Assembly were competent to revise treaties at any time, you might have agitation for revision of this or that treaty, and there would never be any stability in the treaties. And what would happen to our own peace, which we are going to draft, if at any time afterwards there can be agitation with a view to its revision?'

The Chilean Delegate in the Commission improved upon this peroration by calling the topic under discussion a 'trifling matter' and, still better, an 'insignificant and hateful question', a 'diabolical obstacle placed in the path of peace and security'. In this uncongenial atmosphere, those who had vested interests in revisionism, like

²⁵ See above, p. 303 *et seq.*

²⁶ See above, p. 191 *et seq.*

Egypt, and those who knew better, had to content themselves with the modest place that was actually assigned in the system of the Charter to procedures for peaceful change.

The principle of peaceful change was recognised obliquely in the Preamble. It is one of the objects of the United Nations to 'establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained'. In this connection it was stressed by the Rapporteur of Committee I/1 to Commission I of the San Francisco Conference that respect for treaty obligations and the pledged word were an essential factor of international stability as long as they were not divorced from justice, and that 'stability should not be conceived as a negation of healthy international evolution'.

Recognition of a principle is one thing, but giving effect to it is another. Under Article 14 of the Charter, the General Assembly is authorised to recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations. As in the case of Article 19 of the Covenant, the powers of the General Assembly are limited to making recommendations. The General Assembly, however, may do so with a two-thirds majority.

Compared with the corresponding jurisdiction of the League Assembly, the scope of Article 14 of the Charter is considerably narrower. While the Security Council is seized with a matter of this kind, the General Assembly must refrain from making any such recommendation. Moreover, in contrast to Article 19 of the Covenant, the General Assembly is limited by the overriding restriction of Paragraph 7 of Article 2. It must not make recommendations under Article 14 which impinge upon matters which are essentially within the domestic jurisdiction of any State.

In two instances, attempts were made to bring Article 14 into operation. Argentina, supported by other Latin-American States, brought before the Second Session of the General Assembly the question of the revision of the Peace Treaty with Italy of 1947. The General Assembly accepted the Australian and United States thesis that Article 107 of the Charter did not prevent the Assembly from taking up this matter. In view, however, of the many objections voiced to this suggestion in the General Assembly, Argentina withdrew her proposal, and there the matter rested.

The other issue was that of Korea which was also raised at the Second Session of the General Assembly. In this case, the jurisdiction of the Assembly was also based on Paragraph 2 of Article 11 of the Charter. The General Assembly recognised the claim of the

people of Korea to independence and established a temporary commission for the implementation of its proposals. The Commission failed, however, to negotiate the stumbling block over which the peace-makers had failed—the 38th Parallel.²⁷ The members of the Commission were never allowed to set foot on the soil of North Korea. Its recommendations were necessarily entirely academic. It arrived at the conclusion which might have been reached without a journey to South Korea, that the Korean problem was only one aspect of the general international situation, and it expressed the pious hope that, in the course of time, the prevailing tension between North and South Korea might be eased.

Within narrow limits, the Security Council, too, may modify an existing status quo. Under Article 40 of the Charter, it may decide on provisional measures which are likely to assist in preventing any aggravation of a situation which amounts to a threat to, or breach of, the peace. Such measures, however, are 'without prejudice to the rights, claims, or position of the parties concerned'.

In order to see the provisions of the Charter for peaceful change in their proper perspective, it is only fair to recall the comprehensive vision of peace which is embodied in the Charter of the United Nations. Its draftsmen may well claim that they have tried to serve the cause of peaceful change perhaps more indirectly, but more effectively by other devices.

They occupied themselves very much more than their predecessors of 1919 with the economic conditions of peace.²⁸ They tried to provide the basis for functional international co-operation and to promote respect for fundamental human rights and freedoms.²⁹ Each of these forms of international co-operation will require to be examined. Only then will it become clear whether this more comprehensive and indirect treatment of a vital problem has brought the question of peaceful change nearer to a solution than the abortive attempts made under the aegis of the League of Nations.

The negative attitude taken by the members of the League towards collectively controlled peaceful change contributed its fair share to render nugatory the efforts of the League towards collective security. It left the democracies open to a skilful propaganda by the aggressors for change without security. In his Inaugural Lecture in Cambridge on *Collective Security* (1936), Sir Arnold McNair had wisely remarked on the inter-relation between peaceful change and collective security: 'A system which collectivises the use of force and provides no machinery for the collective revision of the status quo is certain to fail.'

²⁷ See above, p. 419 *et seq.*

²⁸ See above, p. 585 *et seq.*

²⁹ See below, p. 568 *et seq.*

THE UNITED NATIONS: COLLECTIVE SECURITY

'All the distinction . . . is that our downright ancestors named the very persons against whom the alliance was made, while the modern refinements have confined it chiefly to quotas, and wrapt up the object in general terms.' R. Ward, *Foundation and History of the Law of Nations* (1795).

COLLECTIVE security is often identified with the whole *raison d'être* of a collective system. In the words of Sir Samuel Hoare (speech at the League Assembly of 1935), 'collective security, by which is meant the organisation of peace and the prevention of war by collective means, is, in its perfect form, not a simple, but a complex conception. It means much more than what are commonly called sanctions. It means not merely Article 16, but the whole Covenant.' So wide a use of the term leads easily to unjustified overemphasis of collective security as compared with the other aspects of peace. It, therefore, appears preferable to restrict the term 'collective security' to the devices for the maintenance of the status quo within a collective system.

THE PRINCIPLE OF COLLECTIVE SECURITY

Any system of collective security rests on five basic assumptions.

First, a system of collective security does not place unlimited reliance in the sanctity of the pledged word. Yet are sanctions of any description a safeguard against the risk that States may go back on their international obligation? It can be plausibly argued that if all States carried out in good faith their obligations under a collective treaty, the need for the application of sanctions would never arise. If, however, such optimism should prove to be unwarranted, there is no greater likelihood that States will apply sanctions than that they will carry out their original obligations. 'Do what we will', said Sir Austen Chamberlain at the Session of the League Council of March, 1925, 'we have no choice but, in the last resort, to depend upon the plighted word'.

If this view were borne out by human experience, law, side by side with morality, would have been wanton luxury within the State. Yet

the State that can dispense with rules of conduct which if necessary are backed by sanctions has still to be discovered. The truth appears to lie between the extremes of unadulterated faith in the pledged word and of cynical distrust of any international undertaking. In inter-State relations, as in those governed by municipal law, it may be taken for granted that most States will at most times conform with their legal obligations. It would, however, be unduly optimistic to hold that all States will do so at all times. The background threat of powerful sanctions does act as a deterrent against temptations to break the law.

Secondly, most of the members of a collective system must be convinced that the maintenance of the status quo is in their common interest and justifies the necessary sacrifices. In a dynamic environment the possibility of achieving this object depends on the relative strength of satisfied and dissatisfied powers, on the willingness of the one to uphold the status quo and on the law-abidingness of the other. If there is no adequate machinery for peaceful change,² the strain upon any existing status quo increases as time goes on and as both the power and the discontent grows greater among 'have-not' States. Awareness of the lack of rational means for international adjustment, too, may easily lead to the development of a guilt-complex among status quo powers and sap their energy of resistance to the demands of revisionist States.

Thirdly, the collective system must be strong enough to cope with any combination of powers who are likely to challenge an existing status quo. Non-universality of a collective system may make such a task more difficult. It does not, however, rule out *ex hypothesi* the possibility of collective security. Members of a non-universal system of collective security, however, may have to make greater efforts to achieve their object than would be required in a universal organisation. The decisive point is whether all, or at least most, of the world powers back the collective effort, that is to say, whether the system of collective security attains relative universality.

Fourthly, if collective security is to be more than alliances under another name, it must fulfil two conditions. It must be an open system and it must not be directed against any specific power as such. Every genuine would-be participant must be welcome to the organisation, and every member must contract as much against itself as against any other potential aggressor.

Finally, collective security and the traditional law of neutrality are incompatible. Any member of a system of collective security consents in advance to waive any rights under the law of neutrality

² See above, p. 485 *et seq.*

which, otherwise, he might claim as a belated friend of sanctionist States. Non-members alone are entitled to demand respect for their position as neutrals. The laws and customs of war remain in force between sanctionist States and the aggressor; for their primary purpose is humanitarian.

An international system which meets these requirements may claim to aim at attaining collective security. It may be defined as machinery for joint action in order to prevent or counter any attack against an established international order.

COLLECTIVE SECURITY UNDER THE LEAGUE COVENANT

Article 10 of the Covenant embodied an express guarantee of the existing international status quo in the relations between members of the League of Nations. Every one of them undertook to respect and preserve each other's territorial integrity and political independence against external aggression. This obligation, however, was qualified by the proviso that, in case of danger of aggression or of actual aggression, the Council was to 'advise' upon the means by which this obligation was to be fulfilled.

In effect, this meant that Article 10 by itself did not impose upon members any positive duty to take any action whatsoever. It merely implied a negative duty not to do anything which would condone acts of aggression. Thus, the essence of the Stimson Doctrine of Non-Recognition³ had always been implied in Article 10 of the Covenant. De jure recognition of Manchukuo and of the so-called Italian Empire of East Africa by members of the League, therefore, could hardly be squared with this obligation under the Covenant.

League members undertook express obligations to apply sanctions in one of three cases. If members went to war before the end of the cooling-off period of three months after an arbitral award, judicial decision or a report by the Council or if they acted in this manner against a member that complied with an award, decision or a unanimous report of the Council, then Article 16 came into operation. According to Article 17, sanctions were to be applied, too, against a non-member State which refused an invitation of the League to accept the obligations of membership for purposes of a dispute and which resorted to war against a member State. Whether Article 16 would be used in favour of a non-member State, which accepted such an invitation, was left in the Council's discretion.

In the form in which Article 16 of the Covenant was adopted by

³ See below, p. 302.

the Peace Conference, it fell far short of French expectations. French drafts had provided for the establishment of an international force with a permanent international staff and composed of national contingents. The more easy-going Anglo-Saxon view, however, prevailed.

The United States and British delegates preferred to rely on the 'good faith of the nations who belong to the League' (President Wilson at the eighth meeting of the Drafting Commission).

The majority of the Commission, too, had an exaggerated belief in the efficacy of economic sanctions. They drew rather facile conclusions from the success of the wartime blockade against Germany and minimised an essential aspect of the matter. The blockade had been only one of the many joint Allied efforts to bring Germany to her knees. If it had not been for the breach of the German front in the West in August, 1918, the slow-motion picture of the blockade against Germany might have lasted an even longer period than it did. It was President Wilson's illusion that the economic sanctions of the Covenant would be 'more tremendous than war. It is the most complete boycott ever conceived in a public document, and I want to say with confident prediction that there will be no more fighting after that. There is not a nation that can stand that for six months' (R. S. Baker and W. E. Dodd, *The Public Papers of Woodrow Wilson*, 1927, vol. II).

Finally, the Anglo-Saxon powers had a traditional horror of inflexible agreements and of too precise commitments regarding unpredictable contingencies. They still felt sufficiently secure to think of themselves exclusively as providers of collective security and suspected the 'consumers' of this article to be rather cunning beneficiaries of their bounty who might inveigle them in war contrary to British and United States inclinations and interests. Their mental outlook had not essentially changed from the attitude that two centuries before, Hume had counselled in his essay on *The Balance of Power* (1752): 'We are so alert in defence of our allies that they always reckon upon our force as upon their own; and expecting to carry on war at our expense, refuse all reasonable terms of accommodation.'

Acquiescence by France in the final formulation of Article 16 was attained by a number of concessions to her anxiety over renewed German aggressiveness. The Anglo-Saxon powers agreed to the immediate disarmament of Germany, the joint occupation of the Rhineland and to the conclusion of separate treaties of assistance to France in case of unprovoked German aggression.⁴ The fact that,

⁴ See above, p. 280 *et seq.*

owing to the non-ratification of the Peace Treaty of Versailles by the Senate of the United States, these treaties of assistance never came into operation, left French statesmen with an acute feeling that they had been the victims of sharp practice at the hands of the United States and of Great Britain.

The members of the League who were primarily interested in collective security had to be content with obtaining in Article 16 of the Covenant provision for the automatic, simultaneous and comprehensive application of economic and diplomatic sanctions. Military sanctions remained entirely optional. The Council was merely authorised to recommend to members 'what effective military, naval or air force the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League'. The members of the League further undertook to support each other in order to minimise the losses resulting from the application of economic sanctions and to resist jointly any counter-measures taken against any one of them by the covenant-breaking State. They, too, granted in advance the right of passage to any forces which, in the course of the application of military sanctions, might require such transit facilities. Finally, the League ban on aggression was completed by provision for the expulsion of a covenant-breaking State. Such a declaration required unanimity, excluding the offender. If the members of the League really meant what they had so solemnly covenanted, the sanctions machinery of the League of Nations presented a formidable deterrent to aggression.

COLLECTIVE SECURITY IN THE PRACTICE OF THE LEAGUE OF NATIONS

(When it became clear that the United States would remain aloof from the League, and that the Soviet Union was to be more than a momentary nightmare, doubts began to assail the hearts of the League statesmen. They had not bargained for the increased responsibilities which had been thrown upon them by the defection of the United States nor reckoned with the rise of a powerful Russia outside the orbit of the League of Nations. At the Second Assembly of 1921, members hastened to adopt a whole string of interpretative (meaning restrictive) resolutions regarding their obligations under Article 16.

In the Polish-Lithuanian conflict over Vilna, in the war between Greece and Turkey, and in the Sino-Japanese conflict, the members of the League failed to apply any sanctions. In the last phase of the war between Bolivia and Paraguay a number of members of the League applied a quasi-sanction against Paraguay. With considerable delays, some of them had prohibited the export of arms and

ammunition to both belligerents. Since, in 1934, Bolivia had accepted a unanimous recommendation of the League Assembly, they confined this prohibition to Paraguay.

In the case of the Italo-Ethiopian War the League showed unwonted signs of energy. This war could not be described as one of the legacies of the First World War as the Polish-Lithuanian Dispute over Vilna or the Greco-Turkish War. In this instance there was no question of letting the British Navy shoulder alone a burden which had been meant to be collective, as might have happened if sanctions had been applied against Japan. There was no sign of touchiness on the part of the United States over any collective action contemplated against Italy by the members of the League. The position was rather the reverse. Thus, this case did not offer any parallel to previous instances in which the League members had failed to discharge their obligations under the Covenant. The Italo-Ethiopian War, therefore, became the test case by which the machinery of the League for collective security was judged and found wanting.

Several features of the handling of this dispute by the League of Nations call for comment.

First, from the outset, the Fascist challenge to the League was open and defiant. While the Italo-Ethiopian Conciliation Commission was sitting in Geneva, Mussolini announced brazenly to the world :

'We have old and new accounts to settle; we will settle them. We shall take no account of what may be said beyond our frontiers, because the judges of our interests and the guarantors of our future are us, only us, exclusively us and nobody else. We will imitate to the letter those who are giving us a lesson. They have shown that when it was a question of creating an empire, or of defending it, they never took at all into account the opinion of the world.'

An official Italian *Communiqué*, made shortly before the actual invasion of Ethiopia began, even improved upon this statement. The Italian Government announced that the existing Ethiopian threat to the security of the neighbouring Italian colonies had been 'aggravated by the fact that the creation of a neutral zone announced from Addis Ababa with specious motives constitutes only a tactical move destined to facilitate the assembly and the aggressive preparation of the Abyssinian troops'.

Secondly, Italy had prepared her civilising mission in Ethiopia over a period of three-quarters of a year without the slightest attempt at hiding her aggressive intentions. Yet, in spite of the wide terms of reference of Articles 3, 4, 11 and 15 of the Covenant, no attempt

was made by the League members to take preventive measures of a deterrent character.

Thirdly, when, eventually, the members of the League applied economic sanctions under Article 16, they did not apply these sanctions automatically, simultaneously and comprehensively, as prescribed by the Covenant. They brought them into force haltingly, gradually and piecemeal. The League Secretariat had not made any preparations for such a contingency and contented itself with last-minute improvisations. The application of sanctions was left to a hastily established Committee of Co-ordination, that is to say, a diplomatic conference of the pre-1914 type.

Fourthly, to apply the slow asphyxiation of economic sanctions without being willing to supplement them if necessary with military sanctions was an empty gesture. The Duce had announced in advance: 'To sanctions of an economic character we will reply with our discipline, with our sobriety, and with our spirit of sacrifice. To sanctions of a military character we will reply with orders of a military character. To acts of war we will reply with acts of war.' Leading statesmen in the sanctionist countries, on their part, had made it equally plain that in no circumstances would they contemplate the application of military sanctions against Italy. Thus, it was left to the aggressor to say which of the collective measures he chose to regard as economic, and which as military, sanctions.

Mussolini accepted with alacrity the position of arbiter in the councils of the League of Nations. The Duce was willing to submit to most of the economic sanctions which were applied or were still under consideration. In view of his preparations for war having been made well in advance, these sanctions did not hamper his venture seriously and served to unite the Italian people in favour of an, at first, unpopular war. Yet, regarding the oil sanction, Mussolini put his foot down. This would have been highly embarrassing. He, therefore, pronounced it to be a military sanction to which he would be forced to reply by appropriate military measures. This threat was enough. The oil sanction remained on the agenda for the duration of the war as a matter under serious consideration.

Fifthly, the League of Nations met with few difficulties from non-members in its sanctions experiment. In October, 1935, the United States even informed the League of its 'sympathetic interest' in the matter. In the following month, the Third Reich announced a policy of strict neutrality and declared that Germany did not intend to adopt the 'role of war profiteer'. The Nazi leaders were prepared to judge the League by results. When, however, it became obvious

that the League members were content with an empty demonstration of their fidelity to the Covenant, Hitler considered that the time had come to benefit from this situation and to help Italy with a flanking movement.

On March 7, 1936, Germany denounced the Locarno Treaty and reoccupied the demilitarised zones of the Rhineland. This move gave Italy a golden opportunity. Sir Austen Chamberlain had made Italy co-guarantor together with Great Britain of the Western settlement under the Locarno Treaty. Great Britain invited Italy to fulfil her functions as a guarantor power. If, in accordance with Article 16 of the Covenant, diplomatic relations with Italy had been severed at the commencement of the war, this comic situation could never have arisen. The Government which had been the prime mover in the sanctions experiment against Italy asked the condemned culprit to sit in judgment of another State for having broken its treaty obligations. To crown the irony of this picture of ineptitude and indignity, it was left to Count Grandi to point out with mock seriousness the contradiction between the continuance of sanctions against Italy and the request made to Italy to assume her responsibilities as a guarantor power.

Finally, the remarkable loyalty to the Covenant shown by the small League members deserves to be mentioned. Even States such as Greece and Yugoslavia, which were exposed directly to Italian military and naval countermeasures, followed loyally the British and French lead. They took their full share in the application of economic sanctions and in joint military and naval preparations under Paragraph 3 of Article 16. Yet all their goodwill was to little purpose. The greater powers represented in the League of Nations had decided to come to terms with those who spread poison gas as the first of the gifts bestowed by Fascist civilisation upon Ethiopia.

THE REALITY OF THE INTER-WAR PERIOD

As in the sphere of peaceful change,⁵ the deficiencies of collective security under the League of Nations led speedily to the revival of the corresponding patterns of traditional power politics: alliances, counter-alliances and attempts at re-establishing systems of balance of power.)

Right from the start, France had set out on the road of establishing a coherent network of alliances with the other beneficiaries from the Peace Treaties of 1919. Disappointed in her hope of making the League of Nations the bulwark of French national security, France

⁵ See above, p. 486 *et seq.*

concluded treaties of mutual assistance with Poland, Czechoslovakia, Rumania, Yugoslavia and, after Hitler's advent to power, with the Soviet Union. In all these treaties due lip service was paid to the League of Nations. The purpose, however, of these treaties was to operate in the likely contingency of the League remaining inoperative or springing into action at too late a stage.

The Little Entente, originally created to prevent a Habsburg restoration, subsequently kept a watchful eye on Hungary and Bulgaria. Like the Balkan Union, it was dressed up as a regional understanding under Article 21 of the Covenant. Neither of them, however, fulfilled the conditions of a regional agreement.

In the Third Committee of the Assembly of 1926, the Polish Delegate had defined in a sensible way a region as a 'territorial' unit within the limits of which the existence of interests very closely bound together makes possible the organisation of a guarantee system sufficiently complete and capable of assuring a high degree of security to all the parts constituting this unit'.

The Danubian area and the Balkans might well have complied with the objective conditions of such a region. The subjective conditions of a regional agreement, however, were conspicuously absent. The treaties, on which the Little Entente and the Balkan Union were based, did not serve the purpose of providing security for 'all the parts constituting this unit'. They were alliances for the preservation of the status quo against the one State in each of these regions which, in 1919, had suffered defeat and, in consequence, had been deprived of parts of its territory. Both these regional alliances depended on the main system of French alliances against Germany remaining intact. Otherwise, they hung in the air; for, alone, these Eastern outposts of France could not possibly hope to maintain the existing equilibrium in their respective areas against German expansion.

The Soviet Union specialised in a different type of treaty. While not averse to alliances, she had to feel her way cautiously back into the comity of nations. Moreover, for a long time, she was obsessed by the fear of a conspiracy on the part of the 'capitalist' powers against her very existence. Thus, she thought it wise to build up a system of individual non-aggression treaties with all her neighbours who were willing to conclude such treaties.

The difficulty was how to define the aggressor. In a collective system the concept and exact definition of the aggressor has its uses. The clearer it is when sanctions are to be applied, and the less controversial the decision is in any particular case, the more smoothly the system will be put into operation. If, however, the collective

system is unreliable, then any definition of the aggressor is not likely to be more helpful than naturalist doctrines of international law on the distinction between just and unjust wars. Then, the chief significance of such formulae lies necessarily in the field of propaganda.

In the Draft Treaty of Mutual Assistance of 1923 aggressive war had been branded as an 'international crime'. A more determined attempt at solving the problem of aggressive war as part of a wider programme for revitalising the League of Nations was made with the Geneva Protocol of 1924. It provided that 'every State which resorts to war in violation of the undertakings contained in the Covenant or in the present Protocol is an aggressor'.

At the drafting stage, M. Herriot suggested the simple formula that aggression should be equated with refusal to submit any issue to arbitration. The solution which was actually adopted was more complicated. The aggressor was to be determined by means of legal and military presumptions, but only after the actual outbreak of hostilities, and such *prima facie* evidence could be overridden by a unanimous decision of the League Council. Sir Austen Chamberlain found the classical reply of British conservative thinking to this product of French political genius: 'I remain opposed to this attempt to define the aggressor, because I believe that it will be a trap for the innocent and a signpost for the guilty.'

In 1933, President Roosevelt made a contribution of his own to the problem by attempting to cut the Gordian knot. His objective test for defining the aggressor had the attractiveness of tempting simplicity. All that was required was that all the nations of the world should agree not to send 'armed forces of whatsoever nature across their frontiers'.

M. Litvinov chose a more sophisticated approach to the problem. While he attended the World Economic Conference of London in 1933, he put his time to more profitable use than taking the Conference at its face value and busied himself with the collection of signatures for bilateral non-aggression treaties. According to these treaties, aggression consisted in declaration of war, invasion of another State with or without declaration of war, attack on another State by land, naval or air forces with or without declaration of war, naval blockade of the coasts or parts of another State or support to armed bands, which had invaded the territory of another State, in spite of an appeal by the invaded State that such support be withdrawn.

Hitler took a leaf out of the Soviet book and concluded treaties of non-aggression with any of Germany's neighbours who was willing

to accept such a dubious offer. His non-aggression treaties came to be only less feared than German aggression itself. The Soviet treaties of non-aggression provided at least that no party which had broken a non-aggression treaty with another State could derive benefits from such a treaty. This reservation left the door open for collective assistance to be given to any victim of aggression. Nazi diplomacy, however, was determined to close any loophole for collective defence.

The German non-aggression treaties served the purpose of isolating the chosen victim while the parties to corresponding treaties, enmeshed in their strictly bilateral treaties, were to watch helplessly until, at the appointed time, their own turn would come. The Soviet Union was fated to be the last of the beneficiaries of this peculiar type of treaty. The *Führer* developed a further speciality: the Anti-Comintern Pacts, a thin cover for aggressive alliances on which the international of totalitarian gangsterism was to rest. In the closing stage of the flirtations between Nazi Germany and the Soviet Union, the latter expressed a keen interest in admission to the wartime edition of the Anti-Comintern Treaties, the Three-Power Pact of September 27, 1940, but, after prolonged German silence, received a response which anyone but a Stalinist deviationist might have expected.

When every major power returned to its congenial pattern of international tactics, Great Britain, too, was bound to search her drawers for old garments which might be adapted to the Geneva fashion. The balance of power, treaties of guarantee and the principle of consultation between the greater powers re-emerged. The concept of the balance of power proved to be the only workable means of ensuring peace in the Pacific. With the United States outside the League of Nations, the Washington Treaties of 1921/22 were the only alternative to chaos and uncontrolled rearmament in this region. They helped to stabilise the situation until, in 1931, Japan saw fit to challenge the Pacific order.

Then it became apparent that the two Anglo-Saxon powers were not willing to enforce the maintenance of the status quo. Neither side was prepared to admit this hidden truth, and Stimson and his British opposite number engaged retrospectively in a sterile campaign of blaming each other for non-resistance to Japanese aggression.

In any case, the Japanese contemptuously brushed aside Mr. Stimson's own short-cut to international order: the doctrine of non-recognition. If the world was not yet ripe for the peaceful adjustment of international disputes and for collective security, the desired result

was to be attained by passive resistance. This brainwave was not exactly novel.

At the Inter-American Conference of Santiago de Chile of 1856 seven American States had signed a treaty which embodied the principle of non-recognition. The Inter-American Conference of Washington of 1890 had adopted a recommendation to this effect. Brazil had submitted a proposal on these lines to the Hague Peace Conference of 1907 and, in 1915, Bryan, the United States Secretary of State, had sent a similar notification to China and Japan in protest against Japan's Twenty-one Demands.

When, from 1931 onwards, Japan continued in earnest with her mission of empire-building, the United States, and the League members in her wake, affirmed that they would 'not recognise any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris' (Resolution of the League Assembly of March 11, 1932).

In any mature legal system this principle is perfectly sound, it is not self-evident. In a comprehensive collective system, it equally makes sense as a subordinate rule, and was implied in Article 10 of the League Covenant. (Divorced from more powerful weapons, the diplomatic sanction of non-recognition is one of the pathetic paper swords which filled the arsenal of Geneva to overflowing.) The Atlantic powers had built a system of balance of power in the Pacific, but had apparently forgotten the price at which alone it could be maintained against Japanese resolve to flout it.)

Again, the balance of power was the British alternative to the French-sponsored Geneva Protocol. The Locarno Treaties reduced automatic tests of aggression to a minimum and, in this respect, left a wide margin of discretion to the League Council. As both the guarantors, Great Britain and Italy, were permanent members of the Council, action depended necessarily on their concurrence. Even in case of 'flagrant violation' of treaty obligations by France or Germany, the guarantors had to convince themselves that such a violation was an 'unprovoked act of aggression' and, furthermore, that 'immediate action' was required.

Actually, it was hardly ever contemplated that the treaty would come into operation against France. Whether it would operate against Germany, would depend on the attitude of the guarantors to that country. When, in the spring of 1936, the emergency arose, neither of the guarantors was prepared to take any serious action, and France did not unduly press for the implementation by the guarantors of their pledges.

The system of collective security under the Covenant had broken

down. The substitutes of treaties of mutual assistance, reciprocal agreements, non-aggression treaties, the non-recognition of duress and balance of power systems in disguise proved to be merely circuitous ways of returning to the traditional strategies and tactics of international politics.

THE EXPERIMENT OF THE KELLOGG PACT

In 1928, when the Kellogg Pact was signed, it was meant to supplement the League system by the unequivocal renunciation of war as an instrument of national policy. The genesis of the Pact throws valuable insight on the mixture of motives behind the political stagecraft of the inter-war period.

On the tenth anniversary of the entry of the United States into the First World War in June, 1917, Briand suggested the conclusion of a bilateral pact between the United States and France for the renunciation of war as an instrument of their national policies towards each other. The French Government submitted a draft treaty on these lines to the United States. A further article stipulated that 'the settlement or the solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise between France and the United States of America, shall never be sought by either side except by pacific means'.

Though it is unlikely, Briand was conceivably unaware of the tactical importance which the *Quai d'Orsay* attached to this peace plan. In any case, these implications did not escape the Department of State. It was improbable that either of the two States would have any desire to attack the other. The experience of the First World War, however, had taught Allied statesmen how difficult it was for any belligerent who controlled the high seas to avoid clashes with the United States over controversial issues of the freedom of the seas. A contingency might arise in which alleged breaches of the law of neutrality by France or her allies in any future war might drive the United States into the opposite camp. A bilateral treaty of the kind which Briand had in mind would avoid this risk and deprive the United States of her freedom of action with regard to France.

The embarrassment of the United States Government over this proposal became manifest from its delay in answering the initial French Note. It required nearly half a year to consider the matter. In reply, it submitted a counter-draft to the French plan. This avoided the potential pitfalls of the French scheme. The United States Secretary of State thought that the two great democracies could make a more signal contribution to world peace by joining

in an effort to obtain the adherence of all principal powers of the world' to this treaty.

The *Quai d'Orsay* was sadly disappointed, but did not dare to refuse the United States counter-offer outright. By return of post, it recommended that 'it would be advantageous immediately to sanction the general character of this procedure by affixing the signatures of France and the United States'. The Department of State refused to associate itself with this suggestion. This would have meant reducing the other powers to the position of mere adherents to the treaty without giving them any opportunity of influencing the contents of the peace pact.

An interesting correspondence followed. In view of France's obligations under the League Covenant and the Locarno Treaty, the French Government did its best to limit the outlawry of war to wars of aggression. The Note of February 28, 1928, which Secretary Kellogg sent in reply, took the French draft at its face value and assumed charitably an equal measure of good faith on the part of all the signatories to the treaty under discussion. Then both aggressive and defensive wars would become merely hypothetical contingencies.

The United States Secretary of State expressed his reluctance to believe that 'the provisions of the Covenant of the League of Nations really stand in the way of co-operation of the United States and members of the League of Nations in a common effort to abolish the institution of war'. He further ventured to hope that 'neither France nor any other member of the League of Nations will finally decide that an unequivocal and unqualified renunciation of war as an instrument of national policy either violates the specific obligations imposed by the Covenant or conflicts with the fundamental idea and purpose of the League of Nations'.

The attitude taken by the Department of State throughout these diplomatic exchanges does not entirely belie Dr. Jessup's thesis that there is a considerable amount of 'shrewdness and cynicism in the American make-up' (*The United States and the Stabilisation of Peace*, 1935). In any case, the State Department served warning that more than one power could play at the game of drafting seemingly innocuous pacts with *arrière-pensées* of its own.

Nevertheless, the Department of State had to move with some caution; for public opinion in the United States had become seized with a crusading spirit for the outlawry of war. The late Dr. Butler, President of the Carnegie Endowment for International Peace, gave the lead. Women's organisations took up the cry. When, in December, 1928, Congress was about to meet, the Department of

State received daily about six hundred letters, urging the administration to ratify the Pact without delay. The White House, too, was subjected to a similar inundation.

On August 27, 1928, the Pact for the Renunciation of War was signed in Paris. With insignificant exceptions, all States became parties to the Treaty. It achieved universality in record time. The obligations undertaken by the signatories were twofold. They renounced war as an instrument of national policy and undertook not to seek the solution or settlement of disputes of 'whatever nature or of whatever origin they may be' by other than pacific means.

Public opinion remained blissfully ignorant of the fact that, in at least five instances, war still remained legal.

First, in the diplomatic correspondence preceding and accompanying the conclusion of the Pact, Secretary Kellogg had made it plain in identical notes addressed to fourteen States (June 23, 1928) that the Pact did not in any way impair the right of self-defence: 'That right is inherent in every sovereign State and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions, to defend its territory from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self-defence.'

Secondly, States were still free to resort to war as an instrument of international policy as, for instance, in the interest of the enforcement of the Covenant or of pacts such as the Locarno Treaty.

Thirdly, the Pact was not to operate in wars between signatories and non-signatories.

Fourthly, wars against signatories who wage war in breach of the Pact remained necessarily legal under the Pact.

Fifthly, the United States considered the Monroe Doctrine^a to be implied in their reservation of the right of self-defence. The United Kingdom reciprocated by the formulation of a Monroe Doctrine of its own: 'There are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defence' (British Note to the United States of May 19, 1928).

In the Soviet Note of adherence to the Pact of August 31, 1928, the British Monroe Doctrine was subjected to scathing criticism:

'Amongst the reservations made in the course of the preliminary diplomatic correspondence between the original participants, the

especial attention of the Soviet Government has been evoked by the British reservation in paragraph 10 of its Note of May 19 of this year, whereby the British Government reserves its freedom of action as regards a series of regions not specifically mentioned. If this reservation is meant to refer to regions already belonging to the British Empire or its Dominions, it is apparently superfluous, since they are already included in the Pact, and the possibility of their being attacked is provided for in it. If, however, some other regions are meant, the participants of the Pact are entitled to know exactly where the freedom of action of the British Government begins and ends. But the British Government reserves its freedom of action not only in the case of military attack on those regions, but also in the case of "an unfriendly" act or so-called "interference", while it obviously reserves the right to an arbitrary definition of what is to be considered as "an unfriendly act" or "interference" which would justify military action on its part. The recognition of such a right as is claimed by the British Government would mean the justification of war, and might be an example for other nations to follow who by virtue of equality of status would take advantage of the same right. The probable result would be that there would not be a single spot in the world where the terms of the Pact were applicable. Indeed, the British reservation contains an invitation to another participant in the Pact to exempt it from the provisions of the Pact in regard to other regions. The Soviet Government cannot help regarding this reservation as an attempt to use the Pact itself as an instrument of imperialistic policy.'

Ignoring blissfully all these loopholes, Briand assured the world at the ceremony of signature that 'war as a means of arbitrary and selfish action, is no longer to be deemed lawful. No longer will its threat hang over the economic, political and social life of peoples. Henceforth the smaller nations will enjoy full independence in international discussion.' Yet, the test of the Pact was soon to come.

In 1929, China and the Soviet Union engaged in an armed conflict. In this instance, the appeal made by the United States and thirty-seven other signatories of the Pact may have contributed to the direct settlement of the conflict between the parties. It may, however, be argued equally plausibly that the Soviet ultimatum to China in itself was sufficient to induce the Chinese government to grant to the proletarian heirs of Russian imperialism their Czarist inheritance of the Chinese Eastern Railway.

In form, the signatories could wash their hands of the war between Bolivia and Paraguay; for Bolivia had failed to sign the Kellogg Pact.

Matters were different with the Japanese attack on Mukden in 1931. Then the Pact gave birth to the mouse of Secretary Stimson's

While the sands of the inter-war period were running out, the Pact shrank into insignificance. Italy invaded Ethiopia. Many of the signatories of the Pact, led by Great Britain and France, recognised the King of Italy as Emperor of Italian East Africa. Italy and Germany, followed by France and the Soviet Union, intervened in the Spanish War. Italy occupied Albania. Germany took Austria and Czechoslovakia. Hungary and Poland associated themselves with the aggressor. Germany and the Soviet Union concluded their secret Protocols of August 23 and September 28, 1939, and proceeded to Poland's fourth partition. The Soviet invaded Finland and incorporated the Baltic States into the Soviet Union. The Peace Pact of Paris had become a dim memory.

In 1941, the existence of the Kellogg Pact was rediscovered and served the useful purpose of providing a legal basis for the destroyer deal between the United States and Great Britain. It was unearthed again by the prosecution at the Nuremberg trial of the major German war criminals. When it was first quoted in court, the President inquired: 'Shall we find it among the documents?' Sir Hartley Shawcross replied: 'It will be put in. I do not think you have it at the moment.' In the end, however, the International Military Tribunal of Nuremberg found it advisable to strengthen its reasoning on the subject of crimes against peace by a lengthy *obiter dictum* on the Kellogg Pact. It happily jumped to the conclusion that, because aggressive war had been made illegal by the Pact, such a breach of treaty was necessarily an international crime. Fortunately, the question of whether its own bench did not harbour a criminal under the Pact was beyond the jurisdiction of the Tribunal.

The fiasco of the Kellogg Pact is hardly surprising. The only surprising thing is that anyone should have thought that, where the League had failed, the Pact might succeed. At the most, the Pact implied the need for the creation of machinery for the peaceful settlement of political disputes and for peaceful change. Like any other Treaty, it authorised the application of sanctions against a pact-breaker. The Covenant provided explicitly, though admittedly imperfectly, both for peaceful change and collective security. The Kellogg Pact failed because it did not, and could not, furnish the only alternative which there is to anarchy, and that is government.

Until rudely shaken out of their dream world by the totalitarian aggressors, Secretary Stimson spoke for many, when, in December, 1929, he asserted that 'the public opinion of the world is a live factor which can be promptly mobilised and which has become a factor of prime importance in the solution of the problems and controversies which may arise between nations'.

Such optimists were still to learn the profound truth of Hobbes' words: 'Covenants, without the Sword, are but words, and of no strength to secure a man at all . . . If there be no Power erected, or not great enough for our security, every man will, and may lawfully, rely on his own strength and art, for caution against all other men' (*The Leviathan*, 1651, Chapter XVII).

COLLECTIVE SECURITY UNDER THE CHARTER OF THE UNITED NATIONS

Through their war leaders, the Big Three had indicated at an early stage of the wartime discussions on future international organisation that they themselves intended to shoulder the chief burden of international security.⁷ According to the British Commentary on the Dumbarton Oaks Proposals, 'responsibility should march with power'. Whether this design was to lead out of the impasse of the inter-war years would depend on the complementary question which was left unasked: Would power march with responsibility? So long as it did, the scheme of the Charter for collective security was even more formidable than that of the League Covenant.

The Security Council is the guardian-in-chief of world peace. Its discretion on what constitutes a threat to peace or aggression is practically unfettered. It has all the appearances of a representative international organ.

Under Article 25 of the Charter, the members of the United Nations agree in advance to 'accept and carry out the decisions of the Security Council in accordance with the present Charter'. Moreover, the Security Council has all the appearances of a true international executive organ. In order to prevent the aggravation of a situation which endangers the maintenance of peace or has led to its breach, the Security Council may call upon parties to a dispute to 'comply with such provisional measures as it deems necessary or desirable' (Article 40).

The application of economic sanctions is no longer left to the discretion of every member of the collective system. The Security Council decides on the application of economic sanctions, and on the type and scope of such measures. Non-military sanctions may include 'complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations' (Article 41). Members of the United Nations have to comply with the request

⁷ See above, p. 427 *et seq.*

of the Security Council to apply such measures. Should non-military sanctions prove to be inadequate, the Security Council 'may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security' (Article 42). Members are bound to 'hold immediately available national air force contingents for combined international enforcement action' (Article 45).

A member against which preventive or enforcement action has been taken by the Security Council may be suspended from membership, and in the case of persistent violation of the Principles of the Charter, it may be expelled by the General Assembly upon the recommendation of the Security Council (Articles 5 and 6).

The general system of collective security is buttressed by provision for regional arrangements. In order to ensure co-ordination, enforcement action under such arrangements depends on authorisation by the Security Council (Article 53).⁸ On the face of it, it appears that the Rapporteur of Committee III/3 of the San Francisco Conference was justified in describing Chapter VII of the Charter as 'a great historic development'.

On closer investigation, doubts begin to rise regarding the significance of the changes which this Grand Design has brought about.

Since the days of Dumbarton Oaks, the world powers were agreed on two points: each of them was to remain sole judge on whether it was to become involved in any enforcement action against an aggressor. Moreover, in no circumstances was the collective system to be able to take enforcement action against any world power without that power's consent. Finally, there was to be no repetition of the Soviet Union's expulsion with ignominy from the League of Nations. Suspension and expulsion require the concurrent votes of each of the permanent members of the Security Council.

Thus, collective security as understood at Dumbarton Oaks and San Francisco, meant collective security against danger to peace from the middle powers and small States and collective insecurity in the face of aggression by any of the world powers. Since the San Francisco Conference, the *de facto* immunity of the world powers from collective enforcement measures has been still further underlined by the monopoly in 'unconventional' weapons which two of these powers hold. In relation to either of them, the security machinery of the United Nations would be inapplicable in fact even if it could be applied in law.

Even if this basic deficiency could be ignored, the military obliga-

⁸ See below, p. 518 *et seq.*

tions of members are not as absolute as might be thought. They are merely contingent. Under Articles 43 and 45 of the Charter, members are only bound to furnish the Security Council with such armed forces, assistance and facilities as are agreed upon in special agreements. These agreements are to be concluded between the Security Council and individual members or groups of members. They 'shall govern the number and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided' (Article 43).

Finally, the Charter contains two reservations of a sweeping character.

Article 51 provides that :

'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations, until the Security Council takes the measures necessary to maintain international peace and security. Members must report immediately such measures to the Security Council, and the Security Council remains free to take whatever action it deems necessary to maintain or restore international peace and security.'

In a properly working system of collective security such a safety-valve would be entirely reasonable. No member State can be expected to sit passively by while its country is being overrun by an aggressor. Such resistance might even constitute valuable first-aid defence until the collective forces could be marshalled and dispatched to the danger spot.

If, however, the veto of any one permanent member of the Security Council makes impossible any enforcement action being taken at all, the reservation of Article 51 of the Charter assumes a different meaning. Member States at war will then each accuse the other of being the aggressor and fight their individual war as if the United Nations, its Security Council and the machinery of the Charter for collective security did not exist. In any conflict between world powers, this would necessarily be the shape that events would take.

This truly remarkable Article is not to be found in the Dumbarton Oaks Proposals. It was devised by the San Francisco Conference on the insistence of the American States. According to the British Commentary on the Dumbarton Oaks Proposals, it was then taken for granted that 'the right of self-defence would of course remain to all members if they were suddenly attacked by another State. But the Organisation would have power to intervene immediately and to determine whether the right of self-defence has been properly used'.

Without some such proviso, enforcement action under the Act of Chapultepec of 1945 and under any future inter-American defence treaty could have been nullified by the veto of any permanent member of the Security Council outside the Western hemisphere.⁹

The United States had a particular reason of its own why it favoured such a clause. It might be interpreted as an indirect recognition of the Monroe Doctrine.¹⁰ The Near Eastern States considered that the Arab League required to be treated on the same footing as the inter-American arrangements for common defence, and France felt that her treaties of mutual assistance against aggression deserved similar recognition.

At this stage, the connection between the original proviso and the regional agreements had worn so thin that a Soviet proposal for the transfer of this Article from Chapter VIII to Chapter VII appeared to be merely logical. With the support of the other Sponsoring Powers, this feat was accomplished. Whoever might have happened to realise the significance of this shift, thought it wise to keep his own counsel. In the British Commentary on the Charter, however, the implications of this Article are stated with engaging simplicity: 'In the event of the Security Council failing to take any action, or if such action as it does take is clearly inadequate, the right of self-defence could be invoked by any member or group of members as justifying any action they thought fit to take.'

The other general reservation is that embodied in Article 107 of the Charter. Each of the United Nations remains free to take whatever action it may care to take against 'any State which during the Second World War had been an enemy of any signatory to the present Charter'.

The 'theory' behind the work of the San Francisco Conference in the field of collective security was expounded by Senator Connally at the fourth meeting of Commission III:

'The responsibility of the five permanent members of the Security Council is momentous; it is tremendous. It may have the effect of shaking the very foundations of the earth. I cannot conceive of any one of the great powers that shall be a member of the Security Council considering lightly that sense of responsibility. It is our theory that they will be sensible of that sense of responsibility and that they will discharge the duties of their office not as representatives of their governments, not as representatives of their own ambitions, but as representatives of the whole Organisation in behalf of world peace and in behalf of world security. Any other course would over a period of time cause the disintegration of this Organisation.'

COLLECTIVE SECURITY IN THE PRACTICE
OF THE UNITED NATIONS

The San Francisco Conference had left the blanks in Chapter VII of the Charter to be filled in by agreements between the Security Council and the members of the United Nations.

In February, 1946, the Military Staff Committee of the Security Council set to work. Each of the five permanent members of the Security Council provided air, army and naval representatives. The Committee established sub-committees to formulate recommendations on the general principles which should govern the organisation of the United Nations forces and to prepare standard forms of agreement under Articles 43 and 45.

The Report of the Military Staff Committee on the General Principles which should govern the organisation of the United Nations armed forces of April 30, 1947, was couched in the form of forty-one Articles. In an appendix the reasons for disagreement between the powers regarding sixteen of these articles were neatly set out. In most cases, China, France, the United Kingdom and the United States had found it possible to reach agreement.

The Soviet Union, however, found plenty of opportunities for dissent. She chose as the main issue of disagreement the principle of complete equality between the permanent members of the Security Council regarding both overall strength and composition of the land, sea and air forces which were to be at the disposal of the Security Council.

The other powers condemned this attitude as unrealistic and were content to aim at a comparable overall contribution by each of the permanent members. The general trend of the other Soviet objections was to prevent any extensive interpretation of the duties of members of the United Nations beyond the minimum that was expressly provided in the Charter. Thus, Article 43 of the Charter enumerated the right of passage as one of the facilities which members were to grant to the forces of the United Nations. The Soviets promptly interpreted this Article as if it had exhaustively specified the facilities to be given by members and opposed the grant of bases to the forces of the United Nations to be included in the General Principles.

In the general discussion in the Security Council on the Report of the Military Staff Committee, the Syrian representative pointed out that if the principle of equality were accepted for the permanent members of the Security Council, it might well be extended to the other members of the United Nations. The Soviet representative cheerfully associated himself with this egalitarian view. As he stressed, it had

been assumed by the Sponsoring Powers that, in any case, the forces which were to be made available to the Security Council, were to be small in numbers and, therefore, the principle of absolute equality of contributions was entirely practicable.

Strange to relate, the Western members of the Security Council took the trouble to refute these arguments in all seriousness. The French member put matters mildly when he thought that the Soviet arguments were 'inspired above all by mistrust applied in advance to the very institution of an international armed force'. The Security Council adopted the more uncontroversial Articles of the Report and deferred the remainder until a more propitious time.

On the suggestion of the United Kingdom representative, the Security Council set a further task to the Military Staff Committee. The Committee was asked to submit an estimate of the overall strength of the armed forces which should be made available to the Security Council. On June 30, 1947, the Soviet members first refused to commit themselves to any figures until agreement on the Report on General Principles had been reached. The figures submitted by the other delegations in the Military Staff Committee varied widely, with the United States favouring on the whole stronger units than any of the other three powers. Yet even they only envisaged an air force consisting of 3,800 planes, 20 divisions of ground forces and a naval force consisting of 3 battleships, 6 aircraft carriers, 15 cruisers, 84 destroyers and 90 submarines. All four powers, however, made it clear that such a tentative estimate did 'not constitute a commitment of their respective governments'.

In order to keep the ball rolling, the Soviet delegation subsequently submitted estimates of its own regarding the overall strength of the United Nations armed forces. By and large, their figures followed the medium line taken by the United Kingdom and China. The fact that, in spite of all previous arguments of *non possumus*, this change in attitude was achieved quite comfortably by the Soviet delegation, was another illustration of the seriousness of Soviet argumentation in the United Nations.

The Soviets proved equally obstructive over the question of a draft standard form of special agreement. Again they held with some plausibility that there was little point in drafting such a document until the remaining differences between the members of the Security Council on General Principles had been ironed out.

By the summer of 1948, the delegations other than that of the Soviet Union in the Military Staff Committee were anxious to adjourn the Committee indefinitely. The Soviet delegation, however, still thought that, in an informal and preliminary manner, the

good work should be carried on. Since then, 'the Military Staff Committee has continued, as a matter of routine, to hold regular fortnightly meetings, but no further discussion has taken place on the subject of the forces to be provided under Article 43 of the Charter' (*Annual Report of the Secretary-General, 1948-1949*). In January, 1950, the Soviets withdrew from the Military Staff Committee as part of their 'walk-out' policy from organs of the United Nations in which the Nationalist Chinese regime is still represented.

In this atmosphere of frustration, the proposal submitted by the Secretary-General in 1948 to the Third Assembly for the establishment of a United Nations Guard was bound to meet with a chilly response. All that the Secretary-General had in mind was a small force to offer a minimum of protection and of technical assistance to United Nations field missions. In the ad hoc Political Committee of the Third Assembly, Poland, the Soviet Union and Yugoslavia announced uncompromising opposition to this modest scheme. In their opinion, the scheme was contrary to the Charter of the United Nations. The matter was then shelved to a Special Committee of the General Assembly.

By the time the Fourth General Assembly met in 1949, the obstructionist tactics of the Eastern *bloc* roused delegates to action. It was decided to establish a United Nations Field Service with an active strength of 300 men. Moreover, the General Assembly authorised the creation of a special panel of 600 United Nations field observers.

Until the war in Korea the sanctions machinery of the United Nations was not put to the test. In the Indonesian and Palestine disputes the parties spared the Security Council the necessity of having to implement Chapter VII of the Charter by the application of coercive measures. In the case of the Greek complaint against her neighbours, the majority of the Balkan Commission recommended that the support given by Greece's neighbours to the Greek Communists should be regarded as a threat to peace within the meaning of Chapter VII. Yet, in this case, as in that of the Berlin dispute, the Soviets saved the situation by exercising their veto.

Thus, the expected happened. When minor parties to a dispute thought that the Security Council might act, the need for collective action did not arise. When the contingency arose, the world power which backed the aggressor or was itself held by the other members of the Security Council to be the culprit made action impossible.

A merely apparent exception to this rule was provided by the application of sanctions against North Korea. In 1950, the tem-

porary withdrawal of the Soviet Union from the Security Council presented the United Nations with this heaven-sent opportunity. When the Soviet Union launched her aggression by proxy from North Korea, one side of the world balance was not actively represented in the Security Council. Thus, it was possible to create the short-lived illusion that, even in a conflict between East and West, the sanctions machinery of the Charter could be made to work.

Immediately following the North Korean attack on South Korea, the United States requested the Secretary-General to call an emergency meeting of the Security Council to deal with this breach of the peace and act of aggression within the meaning of Chapter VII of the Charter. The Security Council decided to invite a representative of Korea to be present at its sittings (June 25, 1950). As the United Nations, and the majority of the Security Council, recognised the South Korean government as the only lawful government in Korea, this meant that only South Korea was represented at the proceedings of the Security Council. A Yugoslav proposal to grant a hearing to the government of North Korea also was rejected.

At the same meeting, the Security Council adopted a resolution proposed by the United States. It noted 'with grave concern the armed attack upon the Republic of Korea by forces from North Korea' and determined that this action constituted a breach of the peace; called for the immediate cessation of hostilities and the withdrawal of the North Korean forces to the 38th Parallel; and called 'upon all members to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities'.

The United States acted promptly. In addition to supplies sent previously under the Mutual Defence Assistance Programme Act, 1949, she supplied the South Korean government with further military equipment forthwith. On June 27, 1950, President Truman ordered United States air and sea forces into action. On the same day, the Security Council recommended to the members of the United Nations to 'furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area'. The United States augmented her effort by the dispatch of land forces, and a growing number of other members of the United Nations speedily responded to the Secretary-General's request for assistance.

As the members of the United Nations had failed to conclude the agreements contemplated by Article 43 of the Charter, the Security Council could not call upon any of the armed forces of member States and had to be content with this improvisation.

United Nations : Collective Security

Subsequently, the Security Council asked the United States to provide the commander-in-chief of the United Nations force authorised the United Nations units in Korea to fly the United Nations flag together with their own national flags. Owing to the lack of any effective international machinery of control and to the preponderance of the American element in the United Nations force, it was very much left to the United States Government and its Far Eastern pro-consul how to interpret the resolutions of the Security Council. In the face of advice received from Pandit Nehru and the Government of the United Kingdom, the United States Government or General MacArthur decided to call the Chinese 'bluff' and, thus, turned an impressive demonstration against aggression into a half-hearted de facto war against Red China.

When, in August, 1950, the Soviet representative returned to the Security Council, he could not undo the steps taken during his absence. He quickly demonstrated, however, that one swallow does not make a summer, and that, in future, the Security Council would be as impotent in any conflict related to the East-West rift as it had been before the interlude of Soviet self-exclusion.¹¹

POST-1945 REALITIES

While representatives of members of the United Nations made pious speeches or engaged in pointless recrimination against each other, their ministries of foreign affairs and war settled down to the real business of providing at least some security for their countries by other means. In the Statement on *Collective Defence under the Brussels and North Atlantic Treaties* (Cmd. 7883—1950), the British Minister of Defence did not mince his words: 'Unfortunately it became clear in the first four years of the life of the United Nations that the conflict between the points of view of the Western Powers and of Soviet Russia and its Eastern European associates went so deep as to make improbable the early achievement on a world-wide basis of the major purposes which the Charter was designed to achieve.'

Both the Eastern and Western powers have accepted this sombre fact. They only differ in their techniques of contracting out of their obligations under the Charter. Whereas the Soviet Union primarily relies on Article 107 of the Charter, the Western powers concentrate on Article 51. Together with Article 27, the veto clause, these two Articles contain all that still matters in the United Nations system of collective insecurity.

The Soviet treaties of mutual assistance in Europe, and the

¹¹ See below, pp. 710, 747 and 757.

supplementary treaties between her satellites, centre virtuously on the hypothetical case of an attack by Germany or any third State 'allied with Germany directly or in any other form'. In the Far East, Japan provides the corresponding bogey. In some of the earlier treaties, the obligation of assistance is limited in duration until a system of collective security has been established. In the treaties concluded since 1946 any pretence at the interim character of these alliances is no longer considered necessary. Today, the Soviet *bloc* is united by a system of defensive alliances which are firmly co-ordinated from Moscow. The subservience of the Communist Parties in all the neighbour States of the Soviet Union to their Soviet masters and the increasingly direct Soviet control of the armies of her allies ensures that, in case of need, the *casus foederis* will be determined in Moscow and in unison.

The Western powers reacted only slowly to this menace. They showed greater anxiety than their Eastern antipodes over the prospects of jettisoning the newly built system of collective security and, too, were fully alive to the qualms of public opinion in the Western world over responding in kind to the Soviet challenge.

The nucleus of the Western defence system was provided by the inter-American defence system. The wartime integration of the Western hemisphere into a coherent regional organisation found its outward expression in the Act of Chapultepec of March 3, 1945. The trend towards still closer co-ordination became evident in the Inter-American Treaty of Reciprocal Assistance of Rio de Janeiro of September 2, 1947, and in bilateral arrangements between the United States and Canada 'for peacetime joint security purposes', including 'mutual and reciprocal availability of military naval and air facilities' (Joint Canadian-United States Statement, February, 1947—*The New York Times*, February 13, 1947).

The Western Hemisphere security zone under the Treaty of Rio de Janeiro extends from the North Pole *via* Greenland around the American Continent. With the reservation that the use of armed forces still depends on the consent of each party, the Organ of Consultation under the Treaty takes its decisions with a two-thirds majority. This procedure of a qualified majority vote extends to the application of diplomatic and economic counter-measures against an aggressor.

Aggression in the meaning of the Treaty covers, but is not limited to, the traditional types of aggression. The Organ of Consultation may characterise as aggression acts other than invasion or 'unprovoked armed attack by a State against the territory, the people or the land, sea or air forces of another State' (Article 9). It may consider

the rejection of a pacifying action in the determination of the aggressor, and Article 6 refers expressly to the case of an 'aggression which is not an armed attack'.

The Treaty is drafted in such a manner that it qualifies both as a regional agreement under Chapter VIII and as a pact of collective self-defence under Article 51 of the Charter. The Charter of the Organisation of American States of Bogotá (April 29, 1948) carries the organisation of the Western Hemisphere a step further. It constitutes a comprehensive and permanent framework for the defence organisation of the Western Hemisphere.

In 1947, Great Britain made her first hesitant move to build up a new defence system on the Continent with her Treaty of Alliance and Mutual Assistance with France (March 4, 1947—Cmd. 7217). The Dunkirk Treaty was based both on Articles 51 and 107 of the Charter. It differed, however, from the Eastern Treaties of this genre by strictly limiting the *casus foederis* to aggressive acts of Germany. In terms of political reality, this Treaty was a political reminiscence, a belated fulfilment of obligations which would have made sense in 1919. At the most, the Treaty had a psychological value. It was a promise to France not to repeat British policy towards Germany in the inter-war years.

In fact, Europe could then still be depicted in the terse words of Mr. Churchill's speech of May 14, 1947: 'What is Europe now? It is a rubble-heap, a charnel house, a breeding ground of pestilence and hate. Ancient nationalistic feuds and modern ideological factions distract and infuriate the unhappy, hungry populations. Evil teachers urge the paying off of old scores with mathematical precision, and false guides point to unsparing retribution as the pathway to prosperity.'

While Mr. Bevin was reported to have been overcome by emotion during the ceremony of signing the Dunkirk Treaty, the United States prepared action in more likely areas of conflict. On March 12, 1947, President Truman proclaimed the Doctrine which bears his name and announced his programme of military assistance to Greece and Turkey. The Soviet Union attempted to counter this move by raising the matter in the Security Council. At the decisive meeting of the Security Council of April 18, 1947, however, the United States carried the day with only the Soviet Union and Poland forming the dissentient minority.

This meeting was accurately described by Mr. Alistair Cooke (*The Manchester Guardian*, April 21, 1947) as a turning point in the history of the Security Council:

'In the record yesterday will go down as a day of victory for the Americans, for it was an anxious Mr. Austin who stepped into the Council Chamber and a benevolent Mr. Austin who stepped out later to the accompaniment of handshakes, pats, and eager bows from other little nations who may one day hope to be on the receiving end of American friendship. Yet to one who has followed almost all the sessions of the Security Council since it was born, it marked the day when the Council seemed to give up the pretence of being an independent tribunal, and, sensing the coming trend, made a rush for the American bandwagon. No small power in the Security Council can any longer condemn the United States without taking careful second thoughts of its own needs for the morrow. And of the big powers Britain, France and China are all financially beholden to the United States, are going to be, or would like to be; and in any criticism they have to make these days of American policy there is a "new note of respectful servility". This leaves only the Soviet Union free to speak her mind, and since for innumerable and familiar reasons, she is committed to regard the United States as the arch-enemy, she speaks her mind always in automatic and eternal abuse. One can almost anticipate these days the acting text of any debate. The delegates will play their stock roles in turn; there will be a long attacking speech by Mr. Gromyko, a long defensive one by Mr. Austin, a short, sharp exchange of insults among Mr. Gromyko, Sir Alexander Cadogan, and Mr. Austin, and finally—as dinner approaches—a vote.'

It took the Western powers nearly another year to make a beginning with a European counter-part to the Inter-American defence system by the conclusion of the Brussels Treaty of March 17, 1948 (Cmd. 7367—1948). Limited to France, Great Britain and the Benelux countries, it covers only part of Europe's Atlantic fringe. By agreement between the original parties, other States may be invited to adhere to the Treaty. The Consultative Council under the Treaty has no executive functions. The *casus foederis* is defined as 'armed attack in Europe' against any of the parties. In this eventuality, the others will 'afford the Party so attacked all the military and other aid and assistance in their power'.

Although in fact of a regional character, the Brussels Treaty is meant to be an agreement for collective defence under Article 51 of the Charter. At least in form, the obligations of the parties to the Brussels Treaty are more far-reaching than those which are incumbent on the members of the inter-American defence system. The duty of military assistance is automatic, but the decision whether the *casus foederis* has arisen in any specific case necessarily remains with each signatory.

To meet the danger of aggression from the East, the Brussels Treaty provided at the most a cadre for first line defence. To be

more, it required to be underwritten by the United States, and the circle of signatories had to be considerably enlarged. In Mr. Acheson's Report to the President on the North Atlantic Pact (April 7, 1949), the Secretary of State mentioned that when the Brussels Treaty had been concluded, its signatories 'repeatedly advised us that, despite their determination to do their utmost in self-defence, their collective strength might be inadequate to preserve peace or ensure their national survival unless the great power and influence of the United States and other free nations were also brought into association with them'.

Ultimately, it was for the United States to say how large the security umbrella was to be. In terms of world-strategy in a divided world, the area chosen was only one of the many danger spots. In terms of evolution of United States political thought, the conception of a North Atlantic area as a United States responsibility was a revolutionary departure from long-cherished illusions. The conception of a North Atlantic Pact corresponded to a vision of collective defence which United States public opinion was prepared to accept. Significantly, one of the reasons which was advanced by the Senate's Foreign Relations Committee in favour of the early ratification of the Treaty was this: 'Since the course of action envisaged in the treaty is substantially that which the United States would follow without the treaty, there is great advantage to the United States and the entire world in making clear our intentions in advance.'

To call the Pact which was concluded in Washington on April 4, 1949, North Atlantic is not a misnomer. The North Atlantic powers, with the exception of Spain, form its nucleus. Thus, the Pact has some features of a regional agreement. Regions are not necessarily land areas. For sea powers, oceans are links rather than barriers. With the exception of Portugal, all the North Atlantic Powers, which are parties to the Treaty, share, too, a common heritage of values and institutions. In the Preamble to the Pact, these are defined as the 'freedom, common heritage, and civilisation of their peoples, founded on the principles of democracy, individual liberty, and the rule of law'.

The fact that the Treaty covers the Algerian departments of France and attacks on the occupation forces of any party in Europe does not militate decisively against the regional character of the Treaty. It is a shortcoming of any regional agreement that regions do not form watertight compartments. Thus, France is an Atlantic power, but it is also a Mediterranean power and, in addition, the centre of a colonial union and empire. As Algiers forms part of metropolitan France, the inelegance of including Algiers in the Pact

and of excluding neighbouring Tunis and French Morocco was unavoidable.

Similarly, the express extension of protection to the German Federal Republic and Berlin (Joint *Communique* of the British, French and United States Foreign Ministers, September 19, 1950) and the indirect extension of the Atlantic area to all places in Europe under the occupation of any of the contracting powers by making attacks on such occupation forces a *casus foederis* is no more than realistic. In an age of air and mechanised warfare, the line from Kiel to Trieste roughly bounds the security zone which, at present, forms the first line of strategic defence of the Atlantic powers against attack from the East.

Once this is accepted, even the inclusion of Italy among the countries invited to sign the North Atlantic Pact can be defended. If Italy were attacked or were to turn Communist, the North-South line of defence which runs through present-day Europe might be turned. Although Austria and France could be sealed off against attacks by land, Soviet air bases in Northern Italy would constitute an additional threat to the Western security zones in Austria and Germany as well as to France.

There is, however, little need for any stretch of imagination in order to prove the regional character of the North Atlantic Treaty. Nobody would be more embarrassed than the signatories if their Pact were to be described as a regional arrangement. Beyond averring their intention of promoting 'stability and well-being in the North Atlantic area' and its security (Preamble and Article 10), they have striven hard to avoid the Pact being labelled as a regional arrangement and they have done so for cogent reasons.

If the North Atlantic Pact were a regional arrangement under Article 53 of the United Nations Charter, the contracting parties would be barred from taking any enforcement action under the Treaty without previous authorisation by the Security Council. Thus, in a circuitous way, they would find themselves back where they had started only to subject themselves again to the Soviet veto in the Security Council from which they had tried so hard to escape. The Pact had to be based on Article 51 in order to give its signatories an amount of freedom of action which is comparable to that of the parties to the Eastern treaties of mutual assistance.

In so far as the positive objects of the North Atlantic Pact are concerned, the obligations undertaken by the parties regarding the political, military, economic and cultural integration of the North Atlantic area are immediate and continuous.

In the case of a threat to the territorial integrity, political independence, or security of any of the participant States, every one of the contracting powers can bring the consultation machinery under Article 4 into motion. Yet, beyond being committed to consultation, the other powers have no further obligation. Conversely, the State which has initiated the procedure of consultation is not bound to accept any of the recommendations made by all or some of the other powers. In the present stage of the cold war between East and West aggression from within and supported from the outside is as real a danger as any case of outright armed attack. In such a contingency, it remains with the contracting parties to decide in each individual case on the appropriate measures.

Matters are only potentially different in the event of an armed attack. Articles 5 and 6 define the exact area covered by the principle of collective defence and expressly include in the *casus foederis* attacks on ships and aircraft in this area and on occupation forces of the contracting parties anywhere in Europe. As the Pact stands, every contracting party decides for itself whether a given set of facts amounts to an armed attack under the Treaty.

If a party to the Pact should find in the affirmative, then such an armed attack on any of the parties is deemed to be an attack against itself and it is obliged to contribute its share to the restoration and maintenance of the security of the North Atlantic area. Yet even then a participant State is only bound to assist the victim of aggression by such individual or concerted measures 'as it deems necessary'.

The North Atlantic Council is the supreme organ of the Organisation. It consists of the Foreign Ministers of the twelve countries which are parties to the Treaty. In the words of the Communiqué of September 17, 1949, issued by the North Atlantic Council, the task of the Council is to 'assist the Parties in implementing the Treaty and particularly in attaining its basic objective'. Due to Canadian initiative, the Organisation was considerably streamlined in 1951. Two committees on ministerial level, the Defence Committee and the Defence Finance and Economic Committee, were incorporated into the North Atlantic Council. The North Atlantic Council Deputies, who meet in London, are the highest permanent working body of the Organisation. The chief auxiliary committees are the Military Committee, the Defence Production Board (London) and the Financial and Economic Board (Paris).

The Military Committee, consisting of the Chiefs of Staffs, has

two sub-committees in permanent session, the Military Representatives Committee and the Standing Group, both located in Washington. The Standing Group, to which the Supreme Allied Commander, Europe, is responsible consists of British, French and United States representatives. Its function is to 'facilitate the rapid and official conduct of the work of the Military Committee' and to give guidance to, and to co-ordinate, the Regional Planning Groups and any other bodies of the Organisation. Five such groups have been established for Northern Europe, Western Europe, Southern Europe—Western Mediterranean, Canada—United States and the North Atlantic Ocean. The United States takes part in all five, the United Kingdom in four, and France in three of these groups.

The defence organisation under the Brussels Treaty has been dovetailed into that of the North Atlantic Treaty by building round it the Western European Planning Group. It primarily consists of the signatories of the Brussels Treaty. At its session in December, 1950, the Consultative Council of the Brussels Treaty Powers agreed to merge the military organisation of Western Union in the North Atlantic Treaty Organisation. The United States and Canada, who had already been represented by observers in the defence organisation under the Brussels Treaty, are also represented in this group. Finally, for limited purposes, Denmark and Italy participate in its work.

It is symbolic of the dominating position of the United States in this defence system that Washington is the permanent seat of the Standing Group under the North Atlantic Treaty. Although, in form, the parties to the Treaty have undertaken reciprocal obligations towards each other, the Mutual Defence Assistance Agreements concluded under the North Atlantic Treaty between the United States and each of the other contracting parties are the military equivalent to the Economic Co-operation Agreements under the Marshall Aid Programme.¹²

The day the Brussels Treaty was signed, President Truman stated his conviction that the 'determination of the free countries of Europe to protect themselves will be matched by an equal determination on our part to help them to do so'. The Senate Resolution of June 11, 1948, went a step further. It defined as one of the objects of United States policy the 'association of the United States by constitutional processes with such regional and other collective arrangements as are based on continuous self-help and mutual aid and as affect its national security'. The programme which has been approved by the United States Congress provides for making avail-

¹² See below, p. 601 *et seq.*

able to the other North Atlantic Treaty Powers funds and equipment to the value of one milliard dollars. Release of the bulk of this aid depends on approval by the President of the integrated defence plan drawn up by the North Atlantic Defence Committee.

In form, the Pact complies with all the criteria of collective security. The potential aggressor is not specifically named, and the elaborate organisation under the Treaty may be turned against armed attack from any quarter. In fact, none of the parties to the Treaty are afraid of an armed attack or of a threat to their territorial integrity, political independence or security from any one in their midst. They all think of one country, and of one country only: the Soviet Union. Thus, in reality the Treaty is a multilateral defensive alliance against an outsider.

The Soviet Union, however, is herself linked by treaties of alliance with the United Kingdom and with France. As the Franco-Soviet Treaty of Alliance of 1944 is modelled on the pattern of the Anglo-Soviet Treaty of May 26, 1942, it will suffice to explore the North Atlantic Pact in relation to the Treaty between Great Britain and the Soviet Union.

Under this Treaty each party is bound to give to the other 'all the military and other support and assistance in his power' in the case of one of them becoming involved in the post-war period in hostilities with Germany or any of the States associated with her in acts of aggression in Europe. To the extent to which obligations under this Treaty are potentially in contradiction to the Charter of the United Nations, the priority of the Charter is assured by Article 103 of the Charter of the United Nations. Thus, in spite of the wide wording of the Anglo-Soviet Alliance, and in accordance with its spirit, the Treaty is only a defensive alliance and as such in the abstract neither in conflict with the Charter nor with the North Atlantic Pact.

Difficulties can easily be imagined in concrete cases regarding the *casus foederis*. They do not, however, arise from the existence of British treaty obligations subsequent to the Anglo-Soviet Alliance. Even in the absence of any such commitments, such differences of opinion would be bound to arise owing to the fundamental changes that, since 1942, have occurred in the relations between the world powers. Thus, in fact, there is little likelihood that, in future, both sides will easily be able to agree in any concrete case on the existence of the *casus foederis*.

This means that, for all practical purposes, the Anglo-Soviet Alliance has become a dead letter. From the point of view of the Soviet Union, its main value is no longer the British obligation of

military assistance, nor any of the other remnants of a seemingly distant past when both States had pledged themselves to 'work together in close and friendly collaboration after the re-establishment of peace for the organisation of security and prosperity in Europe'. The clause which is still cherished by Soviet propagandists is Article 7, in which each party undertook 'not to conclude any alliance and not to take part in any coalition directed against the other High Contracting Party'.

If the proposition is accepted that, in the changed circumstances of world power politics, the Alliance has lost its *raison d'être*—the common enemies having been eliminated, there being little fear of their resuscitation as more than satellites of East and West, and the allies of old having become potential enemies—then no problem arises. If, however, both sides insist on hypocritical assertions of their abiding faithfulness to the Alliance, then there is plenty of scope for mutual recrimination and for the subtleties of international lawyers of the diplomatic branch.

Those in the Soviet camp will argue that the very terms of the Article rule out any alliance, even a defensive alliance, against the Soviet Union, and that, in fact, if not in name, the North Atlantic Pact is a defensive alliance if not something still more sinister.

Their Western counterparts will maintain, with no less conviction, that the North Atlantic Pact is neither an alliance nor a coalition directed against the Soviet Union, but the true embodiment of the collective spirit, an insurance for all and a threat to none. They might add that, in any case, the Soviet Union had already broken Article 7 of the Anglo-Soviet Alliance by her systems of alliances which, in fact, were never meant to fulfil the purposes of treaties authorised by Article 107 of the Charter of the United Nations, but were actually directed against the Western Powers. They might further hold that Soviet behaviour in Germany, culminating in the blockade of Berlin, constituted a flagrant violation of the Alliance which entitled the United Kingdom to consider the Alliance as having been broken by the Soviet Union.

To this there could be the whole canon of Soviet rejoinders, and all might then lead to the usual game of solving the riddle of who was responsible for the breakdown of the Potsdam Agreement of 1945.

In this battle of legal wits, Western diplomatic lawyers have a trump card. They can invite the Soviet Union to sign the Optional Clause under the Statute of the World Court and then to submit the whole issue of the compatibility of British participation in the North Atlantic system with the Anglo-Soviet Alliance to the judgment of

the International Court of Justice. Whereupon M. Vyshinsky would recapitulate his lectures on law being an instrument of politics; he would run sadly through the list of judges of the World Court and foretell scornfully the verdict of the Court: decided against the Soviet Union by thirteen votes to two.

Whatever the legal position may be, the simple truth is that, in Western eyes, one single fact has dominated the international scene since 1945: the growing expansionism of the Soviet Union. Thus, inevitably, nations which do not desire to share the fate of Czechoslovakia or China have been driven to make their choice.

At one time there was the possibility that, under the leadership of Great Britain, the non-Communist part of Europe might develop into a third force between the United States and the Soviet Union. This would have presupposed the ability of the United Kingdom to put her own house financially in order without assistance from the United States and greater faith in the Socialist forces and resistance movements on the Continent than the British Labour Government could bring itself to show towards its Continental counterparts.

Today it would be idle speculation to ponder over the wisdom of such a policy. It is no longer practical politics. The choice is now between a *laissez-faire* policy, which would gradually alter the world balance of power still further in favour of the Soviet Union and leave each of the countries of Europe defenceless against attack by Russia from within and without, and resolute acceptance of United States leadership and all that this implies.

The North Atlantic Pact puts the seal on a decision to which the parties to the Treaty had resigned themselves for some time. Thus, the Pact is another outward symbol of the progressive division of the world into two armed camps, and its purpose is to ensure the maximum of safety and security to the nations banded together in this defensive alliance.

Once the objects of the Pact are shorn of their ideological cover and are accepted in their grim reality, only one question remains. Is the Pact the best means of achieving the desired end?

The Soviet challenge is a challenge to the world at large. Defence against an imperialist power which stretches from the Elbe to the Yellow Sea, whose tentacles reach from Greece to Indonesia, and whose fifth columns are active in the whole Western world, is only possible on a commensurate scale. If, therefore, the Western reply to this onslaught must be in terms of regionalism, then this Pact can only fulfil its purpose if it is one in a chain of interlocking regions which cover the whole of the non-Communist world. Otherwise, the

more strongly any one of these regions is organised, the more it tends to divert Soviet pressure to other areas of lesser resistance.

Furthermore, there is the danger that words and pacts should be mistaken for acts and deeds. There is little gained by arithmetical calculations on the numerical strength of the nations which are parties to the Treaty unless these potentialities are translated into strategic and tactical realities. The nations of Europe will draw little comfort from contemplating eventualities in which their countries may be regarded as 'expendable' and as areas to be 'liberated' in due course from Anglo-American bases in Great Britain and in the Iberian Peninsula. They will require tangible evidence of forces on the spot which are a real deterrent to aggression.

In view of the funds and equipment which the United States have put at the disposal of the North Atlantic Treaty Powers, one of the most urgent problems is now that of man-power. The only place where this is available in abundance is Western Germany. This situation puts the parties to the Pact before an unenviable dilemma.

France and Germany's other neighbours have an understandable aversion to the rearmament of Germany. Rightly, they doubt, too, the loyalty of German contingents in any emergency between East and West. These might well act again as they did in the course of the Napoleonic Wars. Moreover, the government of Western Germany is already playing the card of German security with advantage in its negotiations with the Western powers.

Against this, two vital facts remain. Without the participation of Western Germany, it would be difficult in the extreme to make the defence of Western Europe a reality in terms of man-power. Furthermore, the rearmament of the 'other' Germany is proceeding apace.

A solution which would avoid the risks involved either in inaction or in the re-establishment of a German army is that of individual recruitment.¹³ Such a scheme, however, would require a very much closer integration of the armed forces of the European parties to the North Atlantic Pact than is, so far, contemplated.

In a speech delivered at The Hague on July 15, 1949, Lord Montgomery said: 'I have no doubt whatever of the ability of the united strength of the Western nations to defeat any would-be aggressor. Our man-power, our technical ability, our wealth of raw materials, our potential organising ability, are jointly far greater than those of any other power or group of powers.' Yet, whether the Pact is a 'great historical occasion' (broadcast by Mr. Bevin, March 18, 1949), will not be determined by exercises in a rather com-

placent Couéism, but by the steps taken to implement the Pact in terms of self-explanatory power. The appointment of General Eisenhower as Supreme Commander of an integrated defence force in Europe and the establishment of his headquarters in Paris are a promising start.

NEW THREATS TO NATIONAL SECURITY

Until the day when the Western and Eastern worlds no longer consider each other as *the* potential aggressor, collective security, as envisaged under the Charter of the United Nations, must remain a dead letter. Nations which conclude treaties of mutual assistance or pacts of collective self-defence may honestly cherish the hope that they themselves will never be the aggressors. They may subjectively be convinced that their treaties 'fully conform to the basic principles and spirit of the Charter of the United Nations' (Statement by the British Minister of Defence, February, 1950—Cmd. 7883). Yet, in substance, such treaties differ only in their terminology from the defensive alliances of the bad old days. At any time, the powers against which defensive alliances are directed will accept the assertion of the exclusively defensive character of such treaties only with an air of incredulous irony.

Confidence in the sincerity of such protestations is further undermined by the development of the more recent means of mass destruction.¹⁴ Thus, it was asserted by the United States Department of State that 'an armed attack is now something entirely different from what it was prior to the discovery of atomic weapons' (*The International Control of Atomic Energy—Growth of a Policy*, 1946). The assumption on which this statement is based is that an attack by atomic—or superatomic—weapons may knock out the victim beyond hope of effective rehabilitation or so seriously hamper its defence organisation as to jeopardise its chances of ultimate victory. It follows that preventive war is the most—or only—effective form of countering aggression in the atomic age. In other words, the always slender dividing line between aggressive and defensive war has vanished.

However dubious the theory of the 'first crippling blow' may be, it has its protagonists, and nowhere have these been more vocal than in the United States. If there has been one endearing feature about the Soviet Union in the post-1945 period, it has been the studied disinterestedness—at least in public—of the Soviet leaders in atomic weapons and their dignified reticence in the face of rather hysterical outbursts in the United States regarding the possible use of such

¹⁴ See below, p. 548 *et seq.*

weapons in a preventive war against the Soviet Union. Thus, in reply to questions put by Mr. Alexander Werth, Marshal Stalin replied on September 24, 1946: 'I do not believe the atom bomb to be as serious a force as certain politicians are inclined to think. Atomic bombs are intended for intimidating the weak-nerved, but they cannot decide the outcome of war.'

Since the world has become aware of the slender lead that the United States may still claim in this field, growing fear, or a belated awakening to reason, has brought even the more irresponsible sections of public opinion in the United States to their senses. Eastern delegates in the organs of the United Nations have since found it more difficult to enrich their at one time flourishing collections of alluring newspaper cuttings from the United States press.

For a change, fear is spreading in the Western world that the Soviets may come round to the doctrine of preventive atomic or hydrogen warfare. It is undeniable that leaders of a totalitarian State can more easily engage in preventive war than those in charge of the affairs of a democracy. Moreover, they have at their beck and call fanatical supporters in nearly all the countries of the Western world who might plant such bombs in the very citadels of national defence. The fact that Dr. Fuchs, the senior research officer in the atomic energy centre of Great Britain, could engage undetected for years in his espionage activities lends colour to this hypothesis.

What is still more important is that reflections of this kind tend to undermine reliance on the defensive intentions of the potential enemy. This, in turn, necessarily weakens the resolve never oneself to wage a preventive war. Defensive alliances become increasingly suspect to potential enemies of being aggressive alliances in disguise, and the dividing line between defensive and preventive war becomes a matter of subjective judgment.

The Western world is becoming increasingly uneasy as its painful awareness of this additional danger grows. Aggression from without is only one of the ways in which the Soviet Union may attempt to change the world balance further in her favour. Czechoslovakia and China have driven home the lesson that there is an alternative to armed aggression: aggression from within with direct or indirect assistance from outside.

Hitler had shown in Austria and Czechoslovakia how German groups abroad could be used as Trojan horses. In his war against France and other countries on the Continent, he counted, and with some justification, on fifth columns of a different kind: those classes

in invaded countries which feared the internal enemy more than their conqueror.

The Soviet rulers applied this technique in the countries of Eastern Europe which, after the cessation of hostilities, were under their exclusive military control. With their connivance, local Communists occupied one key position after the other until they were strong enough to transform these States into one party States on the Soviet model, totally subservient to the men in the Kremlin.

In the course of the discussions over Greece in the Security Council, Mr. Warren Austin described this more insidious type of aggression in these blunt words: 'Invasion by organised armies is not the only means for delivering an attack against a country's independence. Force is effectively used today through devious methods of infiltration, intimidation, and subterfuge. No intelligent person could fail to recognise here the use of force, no matter how devious the subterfuge' (June 28, 1947). When, in February, 1948, Czechoslovakia's turn came, Communist technique had been so perfected that it worked successfully without open Soviet intervention. Investigation into the substance of this *coup d'état* was promptly stopped in the Security Council when the Soviet Union made use of the double veto.

The directors of Russian foreign policy, however, realised that, at least for the time being, they had reached the limit of expansion in Europe by aggression from within. They switched their offensive to the Far East.

China fell into the lap of the Communists. It is undeniable that, without the Japanese arms which, in Manchuria, the Russians had providently left for the Communists to collect, the progress of the Communist armies would have been very much slower. Yet sufficient material is available to prove that plenty of arms and equipment which had been sent by the United States to Chiang Kai-shek also found their way into Communist hands. The Kuomintang generals were at least as good merchants of arms as fighters in the field. Beyond this, the Chinese Communists had other allies who were waiting for them not in China alone: the extreme poverty and misery of the peoples of Asia, their unfulfilled nationalist aspirations, and widespread corruption in the existing regimes. ✓

In a courageous speech (March 15, 1950), Mr. Acheson, the United States Secretary of State, at last drew official attention to these facts:

'We must understand that a new era is in full course in Asia. That whole great region, containing more than half the population of the world, is changing profoundly. The significance of that

change, the reason the change is irrevocable, is that it is brought about by a deep and revolutionary movement of the peoples of Asia. Now that movement, that powerful conviction, is made up of two dominant ideas. The first of these is revulsion against misery and poverty as the normal condition of life. The second is revulsion against foreign domination. These ideas meet and fuse in the positive conception of national independence. This is both the symbol of aspirations and the means by which they may be achieved. The desire for national independence is the most powerful spontaneous force in Asia today.¹

The possible alternatives are either continuing Communist penetration into areas which are seething with latent or open social and national revolution or else emancipation of the former hinterlands of Western colonialism and imperialism at a pace fast enough to make the Asiatic countries immune against the Communist virus.

This problem cannot be solved primarily on the level of defence, be it individual or collective; for the existing political and social status quo requires a thorough overhaul. The only question that is still open is whether it will be solved by the West or against it. The shock administered to the West by the Communist victory in China has produced a salutary reaction in the United States programme summarised as Truman's Point Four, and in the policy of the missing component, outlined by Mr. Acheson.¹²

Since then, President Truman has given the lead still more openly by underlining the inseparable connection between the security and economic well-being of the whole of the non-Communist world. In a remarkable letter to Congress on March 25, 1950, he warned the United States that the programme of economic recovery for Europe, the Far East and the undeveloped areas was the 'keystone of our protection against the destruction of another war and against the terrible weapons of this atomic age.' Our armed forces can afford us a measure of defence, but real security for our nation and all the rest of mankind can come only from building the kind of world where men can live together in peace.¹³

The transformation of India, Pakistan and Ceylon into full members of the British Commonwealth is a beginning. The generous release by Great Britain of the sterling balances of India and Pakistan is a further step in the same direction. The creation of the Netherlands Commonwealth may have been achieved in the nick of time. In Burma, the grant of independence has merely replaced one unsolved problem by another. French Indo-China, in the immediate neighbourhood of China, and British Malaya are the primary danger spots. Only a concerted programme of economic and military aid

¹² See below, pp. 611 et seq. and 708.

from the West can stem the Communist flood. The issue of the security of the West will be decided as much in Asia as in Europe. Each part of the Western defence chain is as strong as its weakest link.

Believers in the principle of gradualness may see hopeful signs in the limitations of sovereignty which appear to be involved in agreements on collective defence such as the Inter-American defence system, the Brussels Treaty or the North Atlantic Pact. In Europe's desperate weakness, they may welcome General Eisenhower's appointment as Supreme Allied Commander in Europe and the creation of the office of a European Director of Production. They fail, however, to analyse these treaties with the more detached scepticism that is rightly displayed in the scrutiny of the corresponding treaties within the Soviet orbit.

All these treaties alike pay lip service to sovereign equality and the reciprocity of mutually undertaken obligations. Yet, in fact, they all are telling symbols of the hegemonial position which, of necessity, each of the two super-powers has assumed in either camp and of the trend towards the polarisation of power in their hands. The rest of the world is losing fast what Secretary of State Marshall called, in his speech of February 13, 1948, the 'priceless freedom of a choice' in their international relations.

CHAPTER 28

THE UNITED NATIONS : INTERNATIONAL REGULATION OF ARMAMENTS

'It is part of my responsibility as Commander-in-Chief of the Armed Forces to see to it that our country is able to defend itself against any possible aggressor. Accordingly, I have directed the Atomic Energy Commission to continue its work on all forms of atomic weapons, including the so-called hydrogen or super-bomb.' Statement by President Truman (January 31, 1950).

IN any social environment disarmament can only be relative. There is a direct nexus between armaments and order—and anarchy. The evolution of law and order in the State is, therefore, a process of some relevance for any attempts at the international regulation of armaments. There are similarities, but also significant differences, between the problems of internal and international order.

Order in the State rests on the effective disarmament of any 'overmighty subjects' and on the indisputable monopoly of armed force by the State. The England of the Wars of the Roses; France during the Huguenot Wars; the Holy Roman Empire in the centuries of its decay; post-1919 Italy until the Fascist March on Rome, and the Weimar Republic in the years of its decline, all bear witness to the consequences of the lack of this prerequisite of internal order: internecine war and chaos. In inter-State relations, the corresponding phenomena are fear of war in periods of peace, and war in all its shades from de facto war to de jure war, and from cold war to hot war.

As there is a close connection between disarmament and order, so there is an intimate nexus between order and law. Order presupposes the monopoly of force, and law presupposes order. Otherwise, law is as weak as it was in the days of the Vikings in Iceland or as is international law today.¹ The analogy, however, cannot be safely pressed very much further. We know of more than one type of law.² The law that was introduced into England by the Norman Conquest was certainly the result of order and one of the means of

maintaining it, but it was something very different from the liberal conception of the rule of law. Order may be achieved only at the price of despotism and the result may well be a society law of power. A law of reciprocity or a community law do not necessarily result from order, although neither is attainable without it.

On the inter-State level, the problem of an international order is both less and more complex. In an international society, with a constantly decreasing number of States, which can claim to be sovereign in the political sense,³ the number of armed subjects of international law is more manageable than was the case when absolutist rulers enforced their monopoly of armed force. Each of the sovereign States, however, can resist with a considerably greater chance of success the establishment of any international order against its will. Force can break such resistance only at the price of producing the very chaos to which international order is to be the alternative. If any constructive solution for the dilemma exists, it must be based on the principle of consent.

In a system of power politics, the limits of consent to any international regulation of armaments are narrowly drawn. In comparison with the evolution of order within the State, there is no focal point, around which an international order can crystallise. Every State is the guardian of its own national security. Its armed forces are the last insurance against unreasonable demands by other States and, indeed, of its ultimate survival.

Distrust breeds distrust, and the more turbulent any particular era of power politics, the more the inter-State system is pervaded by all-oppressive fear and suspicion⁴ and the more the armed forces and arsenals of the sovereign States expand. Acceleration of rearmament accompanies the transformation of a post-war into a pre-war era. In any absolute sense disarmament is chimerical within the State and in international society. Any tool can be used by the descendents of Cain to slay their brethren. If States agreed to abolish all forms of modern armament and to limit themselves to spear and bow, their *potentiel de guerre* would still vary according to the number and quality of these weapons and according to the number of spear-bearers and bowmen whom they could put into the field. In inter-State relations, the issue boils down to the limitation of existing armaments and to the prohibition of certain types of weapon.

Limitation of armaments does not banish war, but it affects the atmosphere of international relations and the relative position of the

³ See above, p. 122 *et seq.*

⁴ See above, p. 147 *et seq.*

States which adopt any scheme for the international regulation of armaments. Agreement to this effect on a universal scale or even only between the chief powers would reduce one of the largest items in the budget of every State and set free such resources for more productive ends. While this would be to the general benefit of all concerned, some participants might derive special advantages from such an agreement. In case of another war, rearmament would start in earnest only with the outbreak of hostilities. Highly industrialised States would be at a natural advantage over less developed States in making up any leeway in the production of arms.

Thus, any agreement on the limitation of armaments puts a premium on the greatest *potential de guerre* of States. So long, therefore, as States cannot rule out the possibility of war, even the financial saving that would be the consequence of such an agreement might be only relative. It might lead to the substitution of investment of an exclusively destructive character by some less wasteful form of expenditure, that is to say, investment in industrial equipment which could be employed both for purposes of war and peace. Yet even such temperance of unchecked armaments is based on a bold assumption. Can States rely on each other's good faith to limit their armaments to any agreed treaty level or in outlawing certain types of weapons?

In the Protocol of June 17, 1925, over forty States pledged themselves not to use poison gas and means of bacteriological warfare. All the greater powers, however, carried on with their research in these fields and held considerable stocks of poison gas in readiness for use by way of retaliation. At the Annual Meeting of Imperial Chemical Industries in 1945, Lord McGowan informed the shareholders that 'enormous quantities of lethal gas had already been manufactured by the Company, and plants would have been available for further production if required' (*The Times*, May 25, 1945). The issue of gas masks by the belligerents to their armed forces and to the civilian population was another sign that they doubted their opponents' good faith.

In the Italo-Ethiopian War, Fascist Italy actually did sink so low as to use liquid poison gas against the barefooted Ethiopian forces and civilian population. The Duce could do so without fear of retribution in kind. Between the belligerents of the Second World War, however, the fear of retribution acted as an effective deterrent. An underlying reciprocity of fear constituted the ultimate guarantee of the good faith of the parties to the Protocol of 1925.⁶ It still remains

⁶ See, however, above, pp. 209, 258 and 529, and below, p. 553.

true,⁶ however, that 'consideration of the use of any weapon is always implicit in the very possession of that weapon' (White House Statement of November 30, 1950).

It is not so easy to see how powers can rely on each other's good faith regarding the quantitative and qualitative limitation of armaments. Naval rearmament is relatively difficult to hide. Germany did not, however, find it unduly difficult to contravene her obligations regarding the limitation of naval armaments under the Peace Treaty of Versailles and under the Anglo-German Naval Agreements of 1935 and 1937. According to the Judgment of the International Military Tribunal at Nuremberg (1946—Cmd. 6964, 1946), 'the Treaty of Versailles had only been in force for a few months before it was violated, particularly in the construction of a new submarine arm'. Before the ink on the signatures had dried, the Anglo-German Agreements were broken by the Third *Reich* both regarding the number and tonnage of submarines. In the case of capital vessels, the 'displacement details were falsified by 20 per cent'.

Similarly, it is difficult today to detect the breach of such a convention by a totalitarian State of any size. Still more so in the fields of land and air armaments the only barrier against the breach of international obligations is the standard which any State sets itself or, alternatively, a most thorough system of investigation. Germany after the First World War proved what could be done under the very noses of an understaffed and divided Inter-Allied Military Control Commission on the spot.

LIMITATION OF ARMAMENTS IN THE PRE-1914 PERIOD

The most constructive effort in the field of limitation of armaments in modern history was the work of Castlereagh and Monroe for the reduction of British and American naval forces on the Great Lakes. A formal agreement to this effect on a basis of complete reciprocity was concluded in 1817 between Bagot, the British Minister in Washington, and Rush, the Acting Secretary of State. By the Treaty, the naval forces of each of the two countries were limited to four vessels, with a maximum tonnage of a hundred tons each, and each vessel to be armed with one single eighteen-pounder gun. In the course of time, mutual demilitarisation came to be applied to the whole frontier between Canada and the United States.

When, in 1864, relations between Great Britain and the United States had seriously deteriorated, the United States served notice of

⁶ See below, pp. 548 *et seq.* and 711.

her intention to terminate the Rush-Bagot Agreement. As long, however, as war between the two Anglo-Saxon powers could be avoided, it was easier for both of them to expand westwards than to cross their common north-south frontier. When war between Great Britain and the United States increasingly became a ghost from an unhappy past, the demilitarised frontier acquired in retrospect a magnified significance as a symbol of Anglo-American unity.

Between the European powers of the pre-1914 period war had remained a constant possibility. It was, therefore, with hardly concealed annoyance that the European powers received the Czarist Manifesto of August 24, 1898. Foremost in the Manifesto was a proposal for disarmament and an international conference for its consideration. The German Emperor was not alone when he thought that:

'The whole plan is due merely to the financial exhaustion of Russia. Army increases, strategic railways, the rapid expansion towards China, the Siberian railway, all this has drained her dry, and all the while typhus rages in the land, taxes can hardly be increased, and culture is at the lowest ebb. All this must be counted in, along with the humanitarian nonsense of the Czar. There is a bit of devilry in it, too, because anyone who refuses the invitation will be said to want to break the peace, and that at a moment when Russia cannot go further, while we others—Germany too—can begin again and make up for lost time' (*Die Grosse Politik der Europäischen Kabinette, 1871-1914*, vol. 15, 1924).

Nevertheless, none of the greater powers dared refuse its participation in the conference. On the invitation of the Foreign Minister of The Netherlands, it was convened at The Hague in 1899, and was subsequently known as the First Hague Peace Conference.

Two innocuous resolutions on the eminent desirability of the limitation of armaments and war budgets and some vague recommendations on these lines to the governments concerned were the only constructive contributions made to disarmament by the Hague Peace Conferences of 1899 and 1907. The real views of the members of these conferences emerged implicitly from their concentration on the codification of the rules of warfare and neutrality. Owing to the outbreak of the First World War, the third Hague Peace Conference, which had been contemplated for 1914, never even assembled. Everything else apart, the Russian proposals for disarmament suffered from one fatal deficiency. The other powers suspected that they came from weakness and not from strength. At least this fault could not be ascribed to the victors in the First and Second World Wars when they turned their minds to the problem of the world's

LIMITATION OF ARMAMENTS
UNDER THE PEACE TREATIES OF 1919

During the First World War, the problem of armaments had been largely identified in Allied propaganda with German militarism. Once this was overthrown, and effective steps taken against its revival, the road to general disarmament was thought to be open. This over-simplification of the issue, to put it mildly, found its way into the Peace Treaties.

The Central Powers were deprived of the more modern types of armaments and had to exchange conscription for small standing armies. As an afterthought, the Council of Four added the following preamble to the military, naval and air terms of the peace treaty : 'In order to render possible the initiation of a general limitation of the armaments of all nations'. Thus, a verbal link which was to give rise to much politico-legal controversy in the inter-war period was established between German disarmament and the general limitation of armaments.

The measures envisaged by the victors of 1919 for the limitation of armaments fell far short of President Wilson's expectations. Point Four of Wilson's Fourteen Points had called for 'adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety'. President Wilson incorporated the 'domestic safety' formula into his various drafts of the Covenant and it also appeared in the draft which served as a basis for the discussions of the League of Nations Commission of the Peace Conference. At the fourth meeting of the Commission, however, one of the Japanese delegates proposed the replacement of the word domestic by national safety. This highly significant change in Article 8 of the Covenant was accepted by the Commission. Moreover, there was not to be an international police force. National armaments, therefore, had to be sufficiently extensive to ensure the 'enforcement by common action of international obligations', especially those undertaken by the members of the League of Nations.

The Council of the League was to formulate plans for the reduction of armaments in accordance with these tests. The plans were to be submitted to each State for 'consideration and action'. Once adopted, the limits of armaments fixed in these conventions were not to be exceeded without the concurrence of the Council. Every ten years, at least, these treaties were to be reconsidered and, if necessary, revised.

In a further paragraph, it was stated that the manufacture by private enterprise of munitions and implements of war was open to

'grave objections'. The Council was charged with the duty of advising how the 'evil effects attendant upon such a manufacture' were to be prevented. Finally, the members of the League undertook to 'interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to warlike purposes'.

As part and parcel of an effective collective system, in which reliance was placed on the machinery for the peaceful settlement of international disputes and on collective security, a general limitation of armaments was feasible. Of necessity this part of the League's programme was to stand or fall with the rest.

LIMITATION OF ARMAMENTS IN THE REALITY OF THE INTER-WAR WORLD

A beginning which appeared to augur well for an all-round limitation of armaments was made with the Five Power Treaty of Washington for the Limitation of Naval Armaments (February 6, 1922). The British Empire, the United States, Japan, France and Italy agreed to a total capital ship replacement tonnage at a ratio of 5 (British Empire and United States) to 3 (Japan) and 2 (France and Italy). They further put upper limits on the standard displacement of capital ships, aircraft carriers and other men-of-war and on the maximum calibre of guns carried by such ships. As the United States had remained aloof from the League of Nations, the Washington Conference had to be organised independently of the League.

Only special conditions had made the success of this experiment possible. The parties to the Treaty included all the major powers in the Pacific. Each one, for particular reasons, preferred a system of balance of power in the Pacific area to unlimited rearmament. In a separate Treaty of December 13, 1921, the same powers, with the exception of Italy, who had no possessions in the Pacific, had defined the territorial status quo in this region. So long, therefore, as all concerned were content to keep this balance of power intact, naval rearmament became a matter of secondary importance. Once Japan had decided to challenge the status quo in the Pacific, it was for the others to maintain this balance, if necessary by force, or to suffer its eclipse. When they decided in favour of appeasing Japanese expansionism, the Washington Treaty for the Limitation of Naval Armaments collapsed together with its political foundation.

In Europe, the political conditions of the post-1919 period were not so favourable for an international limitation of armaments as in

the Pacific. Opinion varied on the efficacy with which Germany had been disarmed. If Lloyd George was to be believed, the first part of the disarmament programme, that is to say, the disarmament of Germany as distinct from that of the victorious powers, had been 'achieved to the complete satisfaction of the Allies. As to the second part, with the exception of Britain, the victors were guilty of an outrageous breach of faith. In effect and in practice they repudiated the undertaking they had given' (*The Truth about the Peace Treaties*, 1938, vol. 2)

French statesmen certainly took a different view of German disarmament. Their scepticism was borne out by contemporary British witnesses such as General Morgan and, later on, still more by the boasts of Hitler's military henchmen and by the evidence produced at the Nuremberg Trial of the major German war criminals. In effect, the abolition of conscription in favour of a highly trained professional army had been a blessing in disguise for German militarism. Even the prohibition of certain arms to the German forces did not cause insuperable difficulties. Until 1933, select personnel of the German armed forces received their training in such weapons in the Soviet Union. German-controlled firms outside Germany produced submarines and aeroplanes for Germany. When Hitler started to rearm on the grand scale, even British and French armament firms sold prohibited weapons to Germany with the tacit connivance of their governments.

These developments made France deaf to the increasingly shrill German requests that Allied disarmament should follow the great German example. Moreover, where was the collective security that had been promised to France in 1919? Had not even Great Britain and the United States gone back on their treaties of assistance to France?⁷ What had been the net result of five years of fruitless effort at Geneva; of the vain attempts to establish a more foolproof system of collective security? Inevitably, French statesmen became firmly convinced that the French army and those of the countries of her allies were her only real guarantees of national security. As early as November, 1921, at the Washington Conference, Briand put the French view with bitter frankness: 'If France is to remain alone, you must not deny her what she wants in order to ensure her security' (United States, *Foreign Relations*, 1922, vol. 1, p. 315).

Official opinion in Great Britain and Italy, however, favoured a relaxation of the policy of supervision and distrust towards the former Central Powers. Both countries tended to make light of German contraventions of the Peace Treaty and, in the era of the

⁷ See above, p. 280

Locarno spirit, it became positively bad manners to raise this disagreeable issue. The British government looked with growing sympathy at German claims to equality of treatment in the field of limitation of armaments and felt over-conscious of the failure of the victors to live up to their own good intentions. They were tired to death of French insistence on linking the limitation of armaments exclusively with collective security while treating peaceful revision, the complement of collective security, as anathema.

This static conception of peace had been the essence of the Geneva Protocol. It emerged still more clearly from the Politis-Benes report with which the Protocol was submitted to the League Assembly of 1924. The Rapporteurs insisted on the need for the exclusion of the revision of treaties from the new system of pacific settlement of disputes :

'These are disputes which aim at revising treaties and international acts in force, or which seek to jeopardise the existing territorial integrity of signatory States. The proposal was made to include these exceptions in the Protocol, but the two Committees were unanimous in considering that, both from the legal and from the political point of view, the impossibility of applying compulsory arbitration to such cases was so obvious that it was quite superfluous to make them the subject of a special provision. It was thought sufficient to mention them in this report.'

This stubbornness made the new Conservative government in Great Britain all the more resolved to smash the Protocol and to try its own pet scheme : a new balance of power in Western Europe, with the active participation of Germany and Italy. In the British view, such relative stability as the Locarno Treaties provided, gave at least a chance to renewed efforts for the limitation of armaments. Yet France remained unconvinced. There was not only Germany, but another power, the Soviet Union, of which two of France's Eastern allies were at least as afraid as of Germany. Thus the Final Protocol of the Locarno Conference (Cmd. 2525-1925) contained merely a rather lame reference to our subject : the Contracting Parties undertook to 'give their sincere co-operation to the work relating to disarmament already undertaken by the League of Nations and to seek the realisation thereof in a general agreement'.

In December, 1925, the League Council delegated the uncongenial tasks which Article 8 had imposed on it to a Preparatory Commission for the Disarmament Conference. Ultimately, it left matters with this Conference which, however, was not to meet until 1932. The Council decided to invite not only selected members of the League to take part in the work of the Preliminary Commission, but also three

non-member States: Germany, the Soviet Union and the United States.

The Preparatory Commission set to work and considered a questionnaire which had been prepared by the Council for its consideration.

In order to be quite sure of its ground, the Commission spent considerable energy on the arduous task of defining the term 'armaments'. Needless to say, agreement on this point could not be reached. The British, Bulgarian, Finnish, German, Netherlands, Spanish, Swedish and United States delegations favoured a narrow definition. The French, Italian and Japanese delegations, however, suggested a distinction between peacetime and wartime armaments, the latter to include trained reserves, mobilisation material and 'all other personnel and material that can be brought into action in the course of hostilities by means of the general resources at the disposal of each country' (League Doc. CPD 28, 1926). To have attempted the Sisyphean task of finding a ratio for the *potentiel de guerre* of the various powers of the world would alone have sufficed to wreck the work of the Commission.

The question of trained reserves in itself raised a host of other issues. States with standing armies concentrated on the importance of the reserves which accumulated in countries with conscript armies. These reciprocated by pointing a warning finger to the military value of the para-military organisations which had grown like mushrooms, especially in the countries of the former Central Powers.

Civil aviation was another bone of contention. In the majority view, the personnel and materials employed in civil aviation were *potentiel de guerre* of the highest value. The German and United States delegations strongly dissented from this view. Nevertheless, they admitted rather inconsistently that the 'establishment of a distinction between civil and military aeroplanes simply on the basis of their distinctive technical characteristics must be recognised as impossible'.

How strongly, and for obvious reasons, the German delegation felt on this matter may be gauged from the angry comment which they put on record regarding the competence of military experts to express authoritative views on this subject. The German delegation wanted it to be known to posterity that they had 'always disputed the competence of military experts to give authoritative judgments on matters of civil aviation, including the standards of comparison between civil and military aviation'.

The discussions on the suggested distinction between offensive

and defensive weapons were equally illuminating. A special sub-committee was entrusted with the exploration of this controversial topic. By the common denominator of extreme mutual distrust, it achieved the miracle of a unanimous report. It was agreed that only shelters, obstacles and permanent works such as gun platforms, boom defences and fixed installations for observation and signalling were exclusively weapons of defence against sea-borne attack, and the range of merely defensive weapons against attack by land was defined with similarly becoming caution.

Yet rays of optimism penetrated even this atmosphere of professional gloom. A good many delegations showed a surprising confidence in the good faith of the signatories of a disarmament convention. They were :

'Firmly of the opinion that any form of supervision or control of armaments by an international body is more calculated to foment ill-will and suspicion between States than to create a spirit of international confidence, which should be one of the more important results of any agreement for the reduction and limitation of armaments. They are furthermore firmly of the opinion that the execution of the provisions of any Convention for the Reduction and Limitation of Armaments must depend upon the good faith of nations scrupulously to carry out their treaty obligations' (League Doc. CPD 28, 1926).

The Commission surprised itself when it reached unanimity on the subtle problem of the difference in principle between limitation and reduction of armaments. By limitation of armaments was to be understood the fixation of levels of armaments which the signatories undertook not to exceed. Reduction of armaments meant the steps taken by a State to reduce its armaments to the level on which agreement might be achieved.

Finally, all this collective wisdom was distilled into a draft convention. There was little else left to be done by the world conference to come other than to reopen all these issues or to fill in two minor planks. With wise self-limitation, the Commission had not concerned itself, in all the years of its concentrated frustration, with the questions of the figures at which the limitation of armaments was to be achieved or with the ratio of armed strength which was to be retained by each of the signatories.

While these weary discussions dragged on, only one member of the Commission really enjoyed himself : M. Litvinov. First, he proposed universal and complete disarmament within one year. 'In case of the capitalist States rejecting the immediate abolition of standing armies', the Soviet delegate was prepared to be patient and to extend the period to four years. This time could be usefully employed by

all concerned in order to carry through the following programme : disbandment of all armed land, air and naval forces ; abolition of the ministries and chiefs of staff ; destruction of all arms, warships, military aeroplanes, fortresses and factories for military production ; prohibition of military propaganda and instruction (League Doc. CPD 107). Unfortunately, this rather direct approach to the problem did not meet with enthusiastic support from the other members of the Commission.

Then, the *enfant terrible* of Geneva gave further evidence of sweet reasonableness and produced out of his hat an entirely new draft for gradual disarmament. In accordance with the motto *noblesse oblige*, he suggested that the strongest powers should reduce their armaments at a quicker pace than medium powers and small States. Another brain-wave of his was to model the clauses of his draft on the general prohibition of tanks, long-range guns and heavy artillery in the corresponding articles of the Peace Treaties of 1919. Apparently lacking any classical education, M. Litvinov ignored the wisdom of the motto which lay at the bottom of these Treaties : *Quod licet Jovi, non licet bovi*.

M. Litvinov's inelegant egalitarianism could not but meet with disapproval from his more refined colleagues. He clinched matters when he ventured to doubt whether military experts were best suited to advise on the maximum reduction in armaments. Instead, he had the temerity to recommend the establishment of a permanent international control commission, composed of parliamentarians and workers' representatives. Fear of providing the Soviet Union with still further propaganda material prompted the other delegates to discuss these 'constructive' suggestions with as much mock-seriousness as they could muster and as they had bestowed on all the other items of the Commission's sterile agenda.

Accompanied by the ringing of church bells in Geneva, and further off by the less congenial thunder of the explosion of bombs from Japanese aeroplanes and shells of Japanese naval guns in the Chinese town of Tschapai, the World Disarmament Conference was solemnly opened on February 2, 1932. If anything, the powers were then wider apart from each other than ever before. Yet none of them dared to take public responsibility for any further postponement of the Disarmament Conference.

France adhered to her formula of disarmament and security. Germany, then already under the shadow of the swastika, demanded full equality of rights. The British Government of the day was in sympathy with the German position so long as equality of status did not mean equality of strength, that is to say, German rearmament.

In addition, they had illusions of their own on the possibility of qualitative disarmament on land. Although Sir John Simon, as he then was, put his case with all his professional suavity, not even he succeeded in convincing the other delegates that the aggressive character of a weapon depended on its type rather than on the function to which it was put.

In the summer of 1932, President Hoover stepped into M. Litvinov's boots and proposed to cut the Gordian knot by abolishing certain classes of weapon and by reducing all other armaments to one third. Although the President of the United States had to be treated with a courtesy to which a mere Soviet Commissar could not lay any claim, the fate of his proposal was the same. There was, however, a difference between Mr. Hoover and M. Litvinov. The one was a 'hard-boiled business man' who took himself and the world with due seriousness, whereas the Bolshevik intellectual took an uncharitable delight in mocking the world and, though we shall probably never know this for certain, his own part in it.

In the autumn of 1932, the German Government temporarily withdrew its Delegation from the Disarmament Conference as a gesture against the delay in acknowledging the German claim to equality of rights regarding limitation of armaments and rearmament.

In the following Spring, MacDonald submitted a new British Plan to the Conference, and Roosevelt, the new President of the United States, did his best to make it palatable to the *Fuhrer*. On the eve of the special session of the *Reichstag* which Hitler had convened, President Roosevelt suggested the immediate acceptance by the Conference of the restrictive part of the British plan 'as a first step in disarmament to be followed by other measures'. Moreover, the members of the Conference were to pledge themselves not to increase their armaments nor to send 'any armed force of whatsoever nature across their frontiers'.

Hitler referred in a few friendly words to the President's 'magnanimous proposal', but, in fact, had decided on Germany's rearmament, and not for defence alone. In October, 1933, Germany formally withdrew from the World Disarmament Conference and set about her task of fulfilling her newly found destiny. With increasing effrontery, she broke one article after the other of the disarmament section of the Peace Treaty of Versailles and set the pace for a rearmament race in which the other powers hesitatingly joined. The world had become the poorer for the loss of another long-cherished illusion. The fallacy of the limitation of armaments in isolation had exploded, but a constructive alternative to the waste and

psychological effects of an unlimited armament race was beyond the grasp of a rapidly decaying inter-war world.

THE CHARTER AND THE INTERNATIONAL
REGULATION OF ARMAMENTS

As far as the unilateral disarmament of the aggressors was concerned, the drafting of the Charter of the United Nations closely followed the lines of the Atlantic Charter and of the Moscow Declaration of 1943.⁸ This was left the exclusive responsibility of the victorious powers. It was generally recognised that the international order to be would have to rest primarily on the predominant strength of the 'States possessing the greatest military potential' (*British Commentary on the Dumbarton Oaks Proposals*, Cmd. 6571—1944). Keeping in mind the lessons of the pre-1939 period and foreseeing, perhaps, some of the troubles then still in store, the Big Three were certainly unwilling ever again to let their own national armaments fall to any dangerously low level. Thus, at Dumbarton Oaks and San Francisco, there was little inclination to put any emphasis on the limitation of armaments.

The Dumbarton Oaks Proposals repeated the formulation of the Moscow Declaration that international peace and security were to be established and maintained 'with the least diversion of the world's human and economic resources for armaments'. The Security Council, with the assistance of the Military Staff Committee, was entrusted with responsibility for formulating plans 'for the establishment of a system of regulation of armaments'. In due course these plans were to be submitted to the members of the Organisation for their consideration (Chapter VI (B) (5)). The General Assembly was to concern itself only with the 'principles governing disarmament and the regulation of armaments' (Chapter V (B) (11)).

Whereas limitation of armaments implies a downward trend in national armaments, the term 'regulation' is completely neutral. As matters looked at the time of the Dumbarton Oaks Conference, the level of armaments in the post-war period was to be conditioned primarily by the requirements of collective security under the United Nations. According to the *British Commentary on the Dumbarton Oaks Proposals*, 'the question of what forces a member shall contribute towards the maintenance of international peace and security must be a main factor in deciding the principles by which the regulation of armaments is to be determined'.

⁸ See above, p. 314 *et seq.*

This thesis found general acceptance at the San Francisco Conference. As the French delegate in Commission III saw it (Records of the first meeting, June 12, 1945), the world powers had at last subscribed to the French view that the level of national armaments was a function of collective security. In the absence of collective security, Articles 11 (1) and 26 of the Charter were destined to remain pious aspirations. When, on June 26, 1945, the closing plenary session of the San Francisco Conference took place, most of its members were still blissfully unaware of the fact that they had terminated their labours on the threshold of a new age.

ARMAMENTS IN THE ATOMIC AGE

In response to an appeal to France, Germany, Italy, Poland and the United Kingdom by President Roosevelt (September 1, 1939), the British and French governments publicly announced on the following day that, if their countries were to be involved in war, they were resolved to 'conduct hostilities with a firm desire to spare the civilian population and to preserve in every way possible those monuments of human achievement which are treasured in all civilised countries'. They further mentioned specifically that they had sent instructions to the commanders of their armed forces 'prohibiting the bombardment, whether from the air or sea, or by artillery on land, of any except strictly military objectives in the narrowest sense of the word'.

Hitler responded in a becoming spirit: 'That it is a precept of humanity in all circumstances to avoid bombing non-military objectives during military operations corresponds entirely to my own attitude and has always been advocated by me. . . For my part, I have already publicly made known in my *Reichstag* speech of today (September 1) that the German Air Force has received instructions to confine itself to military objectives.' The *Führer* added a further qualification to his undertaking which, in retrospect, cannot be strongly enough underlined: 'It is a natural condition for the maintenance of these instructions that the opposing air force should keep to the same rules.'"

These declarations were in line with the development of the traditional rules of warfare. Time had not yet allowed for the growth of international customary rules of aerial bombardment. With the necessary goodwill, some general principles of air law may be deduced from the rules of warfare which had been codified at the Second Hague Peace Conference. According to these, the bombardment of undefended places from the air and deliberate attacks

from the air on non-combatants are prohibited. The unratified Hague Rules of Air Warfare of 1923 replaced the test of undefended place by that of military objective. Provided that this test was rigidly applied, it still allowed for a relative distinction between combatants and non-combatants, one of the basic principles of the traditional rules of warfare.

The German bombardment of Warsaw in September, 1939, was certainly not limited to military objectives in that city and promptly gave the lie to the Nazi wolf in sheep's clothing. In April, 1940, a terror raid was made on Kristiansand in Norway. Belgian and Dutch towns, especially Rotterdam, suffered the same fate in May. On September 7, 1940, the *Luftwaffe* commenced its indiscriminate attacks on London. The raid on Coventry was followed by Hitler's vainglorious threat of 'coventrating' and 'erasing' one British town after another. There was no lack of will to carry out this policy either on the part of Hitler or of his millions of enthusiastic followers in Germany, but only of the power.

By the stern law of retribution, the only language which even international outlaws understand, Allied air strategy replied to the indiscriminate attacks by the *Luftwaffe* with area and saturation bombing. Germany's resort to the practice of indiscriminate air bombardment in the Second World War marked the transition to total air warfare. Until then, twentieth-century warfare had blurred, but not entirely obliterated, the dividing line between warfare, as authorised by customary international law, and pristine total war.

Seen in this perspective, the advent of the atomic bomb merely meant an enormous intensification and extension of the potential area of total air warfare. Yet, to use Hegel's apt terminology, this was one of the instances of a change in quantity amounting to a change in kind. This is the permanent significance of the release to mankind of the awesome gift of nuclear energy.

In the inter-war period, protagonists of air warfare and pacifist writers alike had considerably exaggerated the immediate consequences of air warfare. They were, however, near enough to the mark in forecasting its ultimate potentialities.

In the cold statistics of a Marshal of the Royal Air Force:

'Seventy Germany cities were attacked by Bomber Command. Twenty-three of these had more than sixty per cent of their built-up areas destroyed and forty-six about half of their built-up areas destroyed. Thirty-one cities had more than five hundred acres destroyed, and many of them vastly more than five hundred; thus Hamburg had 6,200 acres, Berlin 6,427—this includes about 1,000 acres of destruction by American attacks—Dusseldorf 2,003, and

Cologne 1,994. Between one and two thousand acres were devastated in Dresden, Bremen, Duisburg, Essen, Frankfurt-am-Main, Hanover, Munich, Nuremberg, Mannheim-Ludwigshafen, and Stuttgart. As an indication of what this means, it may be mentioned that London had about 600, Plymouth about 400, and Coventry just over 100 acres destroyed by enemy aircraft during the war' (Sir Arthur Harris, *Bomber Offensive*, 1947).

In the Report of the British Mission to Japan on *The Effects of the Atomic Bombs at Hiroshima and Nagasaki* (1946) the effects of Allied bombing of Germany on city life were compared with those of the two atomic bombs: 'Both in Hiroshima and in Nagasaki, the scale of the disaster brought city life and industry virtually to a standstill. Even the most destructive conventional attacks, the incendiary raids on Hamburg in the summer of 1943 and on Tokyo in the spring of 1945, had no comparable effect in paralysing communal organisation.' As estimated by the Mission, the explosion of one atom bomb of the power and at the height of those used in Japan would destroy or damage beyond repair in a British urban area with an overall housing density of about 15 per acre and a population density of about 45 per acre, thirty thousand houses and would make between fifty to one hundred thousand houses temporarily uninhabitable. Out of a total of four hundred thousand people, roughly fifty thousand would be killed or would die within eight weeks, a comparable number would require extended hospital treatment and another hundred thousand would have to be rehoused for a prolonged period.

Since 1945, the destructive power of atomic bombs has increased many times. If, in another major war, the work of mass destruction by way of atomic bombs and other means were continued, at some stage a point must be reached when many parts of the world's urbanised life, and the civilisations which rest on it, will come to an end.

Even if the wilder speculations on the possible effects of hydrogen, or more accurately tritium, bombs, which are unverifiable, are discounted, and the end of our planet, or of human life on it, should still be beyond the reach of human folly, the transformation of a Jules Verne fantasy into a theoretical possibility marks a new epoch in world civilisation. It elevates the renunciation of war from the question of outlawing the most obnoxious of international tactics into the supreme issue of the choice between civilisation and mechanised barbarism. Or, the question-mark which hangs over our future may be formulated less prosaically in the words of Mr. Churchill's Fulton Speech of March 5, 1946: 'The Stone Age may return on the gleaming wings of science, and what might now shower

immeasurable material blessings upon mankind, may even bring about its total destruction' (*The Sinews of Peace*, 1948).

THE UNITED NATIONS AND THE CHALLENGE
OF THE ATOM

At the Potsdam Conference, President Truman gave Marshal Stalin a hint of the possession by the Anglo-Saxon powers of the super-weapon of the new age. The Soviet leader purported to be little interested in the disclosure. His 'only reply was to say that he was glad to hear of the bomb and he hoped we would use it' (J. F. Byrnes, *Speaking Frankly*, 1948). Honorary Soviet agents in the West had already supplied Red Intelligence with all the necessary information.

Western statesmen were profoundly perturbed over their imagined monopoly of knowledge and their temporarily exclusive manufacture of the atomic bomb. In a Memorandum of September 11, 1945, addressed to the President, the American Secretary of War reflected on the effect of this situation on the relations between the Western world and the Soviet Union: 'These relations may perhaps be irretrievably embittered by the way in which we approach the solution of the bomb with Russia. For if we fail to approach them now and merely continue to negotiate with them, having this weapon rather ostentatiously on our hip, their suspicions and their distrust of our purposes and motives will increase' (H. L. Stimson and M. Bundy, *On Active Service in Peace and War*, 1949).

In the Atomic Charter of November 15, 1945, the President of the United States, the Prime Minister of the United Kingdom, and the Prime Minister of Canada, as the spokesmen of the atomic triangle, warned the public that the 'application of recent scientific discoveries to the methods and practice of war has placed at the disposal of mankind means of destruction hitherto unknown, against which there can be no military defence, and in the employment of which no single nation can in fact have a monopoly'. They placed the responsibility for a constructive solution of the problem upon the 'whole civilised world'. They emphasised that 'the only complete protection' of mankind lay in the prevention of war: 'No system of safeguards that can be devised will of itself provide an effective guarantee against production of atomic weapons by a nation bent on aggression. Nor can we ignore the possibility of the development of other weapons, or of new methods of warfare, which may constitute as great a threat to civilisation as the military use of atomic energy.'

The signatories of the Atomic Charter declared their willingness,

on a footing of full reciprocity, to permit exchange of fundamental scientific information and interchange of scientists and scientific literature 'for peaceful ends' in the field of atomic research. In this way, they hoped that an atmosphere of reciprocal confidence, 'in which political agreement and co-operation could flourish,' might be created. Release of detailed information concerning the practical application of atomic energy would have to wait until it would be possible to devise 'effective, reciprocal and enforceable safeguards acceptable to all nations'. A commission of the United Nations should be speedily established and submit suitable proposals to the Organisation, especially for the 'elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction' and for 'effective safeguards by way of inspection and other means to protect complying States against the hazards of violations and evasions'.

At the Moscow meeting of the Council of Foreign Ministers in December, 1945, the American Secretary of State suggested that atomic energy be placed at the head of the agenda. He was duly deflated by M. Molotov, who thought that it should be put at the end. A rather bewildered Mr. Byrnes agreed to the relegation of the super-weapon, and he became still more puzzled when, in a toast to one of the technical members of the United States Delegation, M. Molotov expressed the hope that the doctor did not carry an atomic bomb in his pocket.

At the first General Assembly in London, the United Kingdom, on behalf of the five permanent members of the Security Council and Canada proposed a resolution for the establishment of a commission on atomic energy. On January 24, 1946, the resolution was unanimously carried. The Commission was to consist of delegates of the members of the Security Council and Canada, and it was to submit its reports and recommendations to the Security Council. Its terms of reference were identical with those envisaged in the Atomic Charter.

The Commission started its work in June, 1946. In the course of two years, the Atomic Energy Commission and its various committees held more than two hundred meetings only to report in the end the customary impasse between East and West. 'After twenty-two months of work, the Commission finds itself confronted by virtually the same deadlock that stultified its initial discussions. The Soviet Union Government itself acknowledges the deadlock. It is now apparent that this deadlock cannot be broken at the Commission level' (Third Report of the Atomic Energy Commission to the Security Council, May 17, 1948—AEC/31/Rev. 1).

The most positive result of the Commission's work was its unanimous finding that, from a technical point of view, effective international control of nuclear energy was a practical proposition: 'We do not find any basis in the available scientific facts for supposing that effective control is not technologically feasible.' In the Commission's considered opinion, 'scientifically, technologically and practically,' all the objects of such a convention as had been contemplated in the Resolution of the General Assembly of January 24, 1946, could be achieved: exchange of basic scientific information on atomic energy for peaceful purposes only; limitation of the use of atomic energy for peaceful ends; elimination from national armaments of atomic weapons and the creation of effective safeguards against evasion and violation of the convention (First Report of the Atomic Energy Commission to the Security Council, December 31, 1946—AEC/18/Rev. 1).

The majority and minority of the Commission differed on four points.

The Soviet Union advocated immediate prohibition of the production and use of atomic energy. The arguments against such mere outlawry on paper had been anticipated in the Lilienthal Report (*A Report on the International Control of Atomic Energy*, March 16, 1946). In this Report, the work of a brilliant team of United States specialists in nuclear energy, the inadequacy of such a legalistic approach to the subject was convincingly demonstrated:

'The development of atomic energy for peaceful purposes and the development of atomic energy for bombs are in much of their course interchangeable and interdependent. From this it follows that although nations may agree not to use in bombs the atomic energy developed within their borders, the only assurance that a conversion to destructive purposes would not be made would be the pledged word and the good faith of the nation itself. This fact puts an enormous pressure upon national good faith. Indeed it creates suspicion on the part of other nations that their neighbours' pledged word will not be kept.'

The argument which follows disposes, too, by implication of the rash analogy from the observance of the Protocol against Poison Gas of 1925 between powers which must fear retaliation in kind on a commensurate level:

'This danger is accentuated by the unusual characteristics of atomic bombs, namely their devastating effect as a surprise weapon, that is, a weapon secretly developed and used without warning. Fear of such surprise violation of the pledged word will surely break down any confidence in the pledged word of rival countries developing atomic energy if the treaty obligations and good faith of the nations are the only assurances upon which to rely.'

The Soviet Union demanded with equal fervour the immediate destruction of all existing stocks of atomic bombs. If the two Soviet proposals had been accepted the relative lead of the United States in the nuclear armaments race would have been eliminated. According to the more optimistic view of the Soviet Union which, for instance, Mr. Stimson took in 1945, but which he subsequently revised, such trust might have begotten a reciprocal trust from the Kremlin. By the time, however, the Atomic Energy Commission took up its work, the wartime enthusiasm of the West for its Eastern comrades-in-arms had been heavily taxed by M. Molotov and his deputies in the United Nations.

By then, the language of Mr. Churchill's Fulton Speech appeared to offer sounder advice to public opinion in the United States and in the Western world at large: 'From what I have seen of our Russian friends and Allies during the war, I am convinced that there is nothing they admire so much as strength, and there is nothing for which they have less respect than for weakness, especially military weakness.' Half a year later, Mr. Churchill elaborated his theme in his speech at Zurich University (September 10, 1946): 'In these recent days we dwell strangely and precariously under the shield and protection of the atomic bomb. The atomic bomb is still only in the hands of a State and nation which we know will never use it except in the cause of right and freedom' (*The Sinews of Peace*, 1948).

Little over three years later (September 23, 1949), President Truman hushed public opinion in the United States by his announcement that 'we have evidence that within recent weeks an atomic explosion occurred in the U.S.S.R.'. Yet with the possible exception of the silent services, nobody knew whether this explosion was accidental, or proved that the Soviet Union had discovered the secret of manufacturing and handling atomic bombs. In any case, the United States was not willing to accept the Russian proposals unless two conditions were fulfilled. This brings us to the last two issues in which the Atomic Energy Commission was divided: the scope of international control and the abolition of the veto in decisions on the enforcement of the convention.

Both the Lilienthal Plan and the Baruch Plan, the official proposal submitted by the United States to the Atomic Energy Commission (Official Records of First Meeting, June 14, 1946), contemplated the establishment of an International Atomic Development Authority with a monopoly in nuclear energy. All phases of the development and use of atomic energy, starting with the raw material, were to be entrusted to this body. It was to have 'mana-

gerial control or ownership of all atomic energy activities potentially dangerous to world security', 'power to control, inspect, and license all other atomic activities,' 'the duty of fostering the beneficial uses of atomic energy,' and far-reaching research and development responsibilities 'intended to put the Authority in the forefront of atomic knowledge and thus enable it to comprehend, and, therefore, to detect misuse of atomic energy'.

In order to make the Convention effective, there was to be 'no veto to protect those who violate these solemn agreements not to develop or use atomic energy for destructive purposes'.

Before the United States was ready to make the use of atomic bombs illegal and to destroy her own stock piles of atomic bombs, Mr. Baruch announced that further conditions would have to be fulfilled: 'Before a country is ready to relinquish any winning weapons, it must have more than words to reassure it. It must have a guarantee of safety, not only against the offenders in the atomic area, but against the illegal users of other weapons: bacteriological, biological, gas, perhaps, and (why not?) against war itself.'

Seen from the Kremlin, this Plan was not exactly what Mr. Churchill had described as 'one of the most generous gestures of history'. It looked more like the establishment of a world State run by a capitalist-controlled 'international syndicate or trust'. All that was missing, M. Gromyko acidly remarked, was provision in the Commission's report for dividing the profits of the syndicate's operations (Meeting of the Security Council, March 5, 1947). What would happen, argued the spokesmen of the Kremlin, would be that teams of United States and other Western specialists, in Soviet estimation Intelligence agents in disguise, would roam freely in the Soviet Union and collect all the data regarding the military and industrial secrets of the Soviet Union. The International Authority could interfere on a considerable scale with economic planning in the Eastern half of the world and refuse to authorise peaceful uses of atomic energy on alleged grounds of international security, but really in order to hamper socialist reconstruction.

If the majority principle were adopted regarding routine matters in a scheme limited to a periodic international control—which in the end the Soviet Union was prepared to concede—such a proposal was practicable. If, however, the principle of world power concord or, more simply, the veto, was to be abandoned for enforcement measures in the field of nuclear energy, this was preposterous. Then the Soviet Union would deliver herself bound hand and foot to a permanent, and hostile, majority which, with capitalist ruthlessness, might even frame the innocent Soviet lamb as the transgressor. The Soviet

Union could not renounce the veto, M. Vishinsky explained with some justice to the ad hoc Political Committee of the Fourth General Assembly in November, 1949, for 'the veto is a powerful political tool . . . Perhaps we use it more, but that is because we are in the minority and the veto balances power. If we were in the majority we could make such grandiloquent gestures as offering to waive the veto on this and that.'

Even so, it would be within the power of the United States and an obedient majority in the International Authority to postpone to the Greek Calends the destruction of the United States' store of bombs. If this was the only constructive solution which the Western powers had to suggest, then anything, including the intensification of the cosmic armament race, was to be preferred to a policy of selling-out under the threat of 'atomic blackmail'. The Baruch Plan was interpreted as being 'simply one more weapon in the arsenal of the American cold war for coercing and putting in the wrong the Soviet Union' (K. Zilliacus, *I Choose Peace*, 1949).

Analysed from a society angle, every one of the fears of the Soviet Union may be conceded to be real. In order to be fair, it is necessary to look at such an issue at least occasionally with the eyes of those in the other camp of our split world. In the course of the prolonged discussions on the subject in the Atomic Energy Commission, the Security Council and the General Assembly, the Soviet Union did move a long way from her originally intransigent position. Yet this was not far enough to inspire the confidence of the West in any compromise plan.

In assessing the Baruch Plan, it is worth pondering on the test applied to it by Professor Blackett (*Military and Political Consequences of Atomic Energy*, 1949):

'It is interesting to speculate on what would have happened if the roles of America and Russia in relation to atomic bombs had been reversed. Suppose that Russia had produced bombs first and used them, say, on June 4, 1944—two days before D-day—to induce German capitulation to the Soviet Armed Forces alone. Britain and America would have been bitterly critical, and justifiably so. Then, suppose that the Soviet Union had proposed a plan of control like the Baruch Plan but in reverse, with immediate international ownership and inspection, but with the outlawing of the use of the bombs and their destruction postponed for several years, and even then made dependent essentially on Soviet acquiescence. Suppose this had happened, would such a plan have been hailed by the Western powers as "one of the most generous gestures of history"?'

Viewed from a functional point of view,* the Lilienthal and Baruch

plans are courageous efforts on the only lines which are commensurate with the magnitude of the challenge. If the Soviet Union insists that these plans run counter to the basic principles of the Charter of the United Nations, they are right. The Charter, itself a product of the pre-atomic age, is hardly adequate to cope with the issues of that period. In the atomic age it is as incongruous to the challenge of our time as an international police force armed with bow and arrow. The only constructive alternative to cosmic rearmament and world chaos is the world State. Within the limits required for the effective control of nuclear energy, Mr. Baruch and the United States Government were sufficiently imaginative to accept this unavoidable implication of their proposals.

After, to use the description of an eyewitness (*The New York Times*, September 9, 1945), giant pillars of purple fire had risen from Hiroshima and Nagasaki, some of the world's statesmen temporarily awakened to the dimensions of the problem.

Mr. Attlee told a national demonstration of the United Nations Association (October 10, 1945): 'Atomic energy has been liberated and that fact makes war merely a form of suicide for mankind.' In November, 1945, a remarkable debate on foreign affairs took place in the House of Commons. In the course of it, Mr. Eden exclaimed: 'Every succeeding scientific discovery makes greater nonsense of old-time conceptions of sovereignty.'

Mr. Bevin, too, allowed himself the rare luxury of speaking his own mind as distinct from that of his Office and dreamt of a directly elected assembly, 'in order that the great repositories of destruction and science on the one side may be their property to protect us against its use; and, on the other hand, it could easily determine in the ordinary sense whether a country was going to act as an aggressor or not'.

In a speech at Ottawa on December 17, 1945, Mr. Mackenzie King joined the neo-federalist chorus:

'If we are agreed on the ultimate necessity of some measure of world government, we should by every means in our power support and strengthen every agency of international co-operation and understanding that can help to make the world community a reality. The peoples of all nations must address themselves to the task of helping to devise institutions and relationships that will enable mankind to ensure, if not its salvation, at least its survival. We must work with all our might for a world under a rule of law. Humanity is one. We must act in the belief that no nation and no individual liveth to himself alone, and that all are members one of another.'

Distinguished representatives of the armed services pointed the same way. General Marshall foretold: 'The implications of atomic

explosion will spur men of judgment as they have never before been pressed to seek a method whereby the peoples of the earth can live in peace and justice' (*Biennial Report to the Secretary of War*, 1945). In *Bomber Offensive* (1947), Sir Arthur Harris arrived at the same conclusion: 'The only alternative to such otherwise inevitable destruction is a world federation, a government of the world powerful enough to determine the policy of every country.'

Yet, these passing moments of reflective commonsense and vision soon passed. Spy trials, subversive activities, foreign sponsored rebellions, policies of *jail accompli*, acrimonious exchanges rising in a crescendo to 'defamation and innuendo' (Mr. Austin in the Security Council, March 10, 1947) from the platform, over the radio and in the council rooms of the Disunited Nations hardly assisted in producing the mental climate for a highly integrated international community. The impasse recorded in the second and third Reports of the Atomic Energy Commission was merely one of the many outward symptoms of a basic disunity of purpose between the world powers.

At the request of the Third General Assembly of 1948 (Resolution of November 4, 1948), the Atomic Energy Commission again settled down to work only to report back on July 25, 1949: 'That the impasse as analysed in the third report of the Atomic Energy Commission still exists: that these differences are irreconcilable at the Commission level, and that further discussion in the Atomic Energy Commission would tend to harden these differences and would serve no practicable or useful purpose until such time as the Sponsoring Powers have reported that there exists a basis for agreement.'

Still, in response to a further urgent call by the General Assembly of 1949—with a slightly perverted sense of humour called the Peace Assembly—the permanent members of the Atomic Energy Commission inaugurated a series of meetings to break the deadlock. Yet, in pursuance of the general Eastern 'walk-out' policy over China, the Soviet member of the Commission decided on January 19, 1950, to leave the other Sponsoring Powers to their own counsels.

THE FATE OF 'CONVENTIONAL' ARMAMENTS

In the parlance of the United Nations, conventional armaments are armaments other than nuclear weapons and other means of mass destruction. The advent of the atomic bomb has reduced air bombardment with high explosive and incendiary bombs to conventional weapons. Presumably whenever the hydrogen bomb should be manufactured, then, for a time, this will be classified as unconven-

tional and 'ordinary' atomic bombs will have to take their place with other 'conventional' means of exterminating *homo sapiens*.

Conventional armaments in this sense came on the agenda of the United Nations in a rather haphazard manner. At the meeting of the Security Council of August 29, 1946, M. Gromyko proposed that the members of the United Nations should be asked to submit within a fortnight information to the Security Council on the location and size of the armed forces of members in the territory of other States, and on the location and size of the garrisons of sea or air bases in such member States. As the Soviet Union saw it, this was an adroit way of paying the Western powers back in kind for the unfriendly haste with which they had insisted that Allied forces be withdrawn from Persia. What, then, about the forces of the Western powers in Egypt, Syria, the Lebanon, Indonesia and China?

This line of attack was too tempting to be limited to the exclusive circle of the Security Council. M. Molotov in person took up the cry in the First General Assembly. Mr. Bevin was not prepared to let the game of demagoguery by conference become a Soviet monopoly. With all the suavity which he could muster, he asked for the inclusion in the census of all forces in the home countries of member States. He was ably seconded by Mr. Noel-Baker who insisted on international verification of any such census.

Thereupon, M. Molotov tried to go one better and suggested the inclusion in the census of all types and stocks of weapons. Then, hoping to win his international spurs, Sir Hartley Shawcross went into the lists and produced one of his forensic brainwaves. With the enthusiasm of youthful ambition, he thought the Soviet proposal was acceptable, provided the Soviet Union consented to the establishment of an 'international supervising commission operating within the framework of the Security Council, but its operations not subject to the veto of any power on the Security Council, which shall be entitled by agents of any nationality to verify and confirm on the spot' all information received. While the British St. George imagined that he had slain the Soviet dragon, he had in fact done something very different. He was on the point of committing the Western powers to agreeing to divulge the secret of the actual stocks of United States atomic bombs and to immediate inspection of her atomic arsenals by an international commission. After intense diplomatic activity behind the scenes, M. Molotov emerged as the victor in this improvised round of the fight for (?) or against (?) the international regulation of armaments.

The General Assembly formally recognised the 'necessity of an

early general regulation and reduction of armaments and armed forces' and asked the Security Council to formulate the necessary plans. Obliging, the Soviet Delegation agreed to link the question of the troop census with this general scheme and withdrew its offensive proposals. The plans to be drafted were to assure that such conventions would be 'generally observed by all participants and not unilaterally by only some of the participants.'

In the Resolution, specific reference was made to the need for international inspection. Ultimately, the plans formulated by the Security Council were to be submitted to the members of the United Nations for consideration at a special session of the General Assembly.

In full accord with the traditions of the League of Nations, the General Assembly recommended a 'corresponding reduction of national armed forces' and a general progressive and balanced reduction of national armed forces. Finally, the General Assembly regarded the 'problem of security as closely connected with that of disarmament'. In his closing speech, M. Spaak, the President of the First Assembly, ventured to suggest: 'The disarmament resolution has created a great hope. It is the greatest world event since the signing of the Charter at San Francisco, and it can be said that mankind has entered on a new era, of which you, gentlemen, are the authors.'

In February, 1947, the Security Council established a Commission for Conventional Armaments, composed of delegates of all the members of the Security Council. The Commission was instructed within three months to submit proposals to the Security Council for the general regulation and reduction of armed forces, including 'practical and effective safeguards' against the breach of such plans. In March the first meeting of the Commission took place.

In accordance with a directive of the Security Council, the Commission was not to concern itself with matters within the competence of the Atomic Energy Commission. The Commission interpreted its jurisdiction as covering all armaments and armed forces, except atomic weapons and other weapons of mass destruction. Weapons of mass destruction were defined 'to include atomic explosive weapons, radioactive material weapons, lethal, chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above.'

The discussions in the Commission's Working Committee and in the full Commission led to the usual impasse between the majority and the two dissident Eastern members. The latter tried to extend

the Commission's jurisdiction to cover the prohibition of the use and manufacture of atomic weapons and other means of mass destruction as well as the destruction of existing stocks of such weapons. Furthermore, they disagreed with the majority, who wanted to make the regulation and reduction of armaments dependent on the existence of an atmosphere of international confidence and security. In their view, the speedy formulation and implementation of measures for the regulation and reduction of armaments was the surest way to establish international confidence and security.

By a vote of nine to two, the Commission adopted a resolution, proposed by the United Kingdom and embodying Canadian and United States amendments (August 12, 1948—S/C.3/24). It enunciated the principles which were to govern the regulation and reduction of armaments and armed forces. Such a system was to be universal and to include from the start at least all States with substantial military resources; for without some measure of international confidence and security such a system could not be put into effect. Examples of conditions essential to confidence and security were declared to be an adequate number of agreements under Article 43 of the Charter; until then, 'an essential step in establishing a system of collective security will not have been taken'. Other prerequisites, similarly easy to attain, were the establishment of international control of atomic energy, and the conclusion of peace settlements with Germany and Japan. Once these conditions for the international regulation of armaments existed, armaments and armed forces could be limited to a level necessary to maintain international peace and security under the Charter. Finally, the system was to include adequate safeguards for its observance, and provision was to be made for effective enforcement action in the event of violation. Thus, in well-worn words, the familiar Geneva discussions on the direct and indirect approaches to disarmament were dished up once again.

To complete the repeat performance, in the Third General Assembly of 1948 M. Vyshinsky proposed the general reduction by one-third of all existing land, naval and air forces as part of a more comprehensive scheme. In Mr. Bevin's *Report on the Third Assembly* (Cmd. 7630—1949) the Soviet proposals were characterised as a 'manœuvre which aimed at exploiting the unanimously accepted principle of the desirability of disarmament with a proposal which could not stand up to the light of criticism'. Other reasons apart, there was no guarantee that the Soviet Union would accept a system of control that the other members of the United Nations would consider adequate.

The attitude taken by the British Delegation had at least the

merit that, in the field of armaments, it refused any longer to play power politics in disguise. In the words of Mr. Bevin's report, 'it was known by public opinion in the Western European countries that a measure of rearmament was being undertaken in order to repair some of the weaknesses in their defence system . . . It would be dishonest to suggest to the world that agreement was possible by inviting the Disarmament Commission to resume its work.'

In this situation, the Soviet proposal was necessarily treated by an impressive majority of the General Assembly as an annoying manoeuvre to maintain the existing relative strength of the armed forces of the powers, and to prevent the rearmament of the West to a level which would reduce Soviet superiority.

In February, 1949, the Soviet member brought another comprehensive draft resolution on disarmament before the Security Council. Mr. Austin brushed it aside as a 'succotash' of all previous Soviet arguments—and did not even trouble to find out the Russian equivalent to this attractive American mixture of Lima beans and sweet corn. After a brief discussion, the Council voted down the Soviet draft resolution.

When, in the following year, the fourth annual duel in the General Assembly took place, the invective used by our modern gladiators of peace had become still more repetitive and, if possible, still more tedious. The world audience which the speakers imagined they were addressing had shrunk to the professionals in the game and to the steeply decreasing fraction of whom it could still be said that 'disarmament, like democracy, is a word that fires the imagination and provokes enthusiasm' (Mr. Bevin's speech to the Foreign Press Association in New York—November 11, 1946).

SOME IMPLICATIONS OF THE REARMAMENT RACE

The consequences of the East-West rearmament race are not necessarily the same for both sides. The effect on the financial and manpower budgets of all the countries concerned is to divert more resources to unproductive purposes. The masters of the Kremlin can, however, count with greater certainty than their opposite numbers in the West on the defensive character of the strategy of their potential enemies. From Moscow, this may appear to be a highly biased statement, but it can be substantiated.

The argument of the more peaceful character of democracies as compared with totalitarian States is one which may not carry much conviction with autocratic leaders. Nevertheless, at least in terms of ~~reality~~, the checks in modern democracy on anyone who may

plan a preventive war are more effective in the West than in the East. Yet even if the democracies of the West could be duped into an aggressive war, what would be its result? For a considerable time to come, the armies of the Soviet Union could overrun the Continent north of the Pyrenees and the greater part of the Near and Middle East. Western bomber forces, with or without atomic bombs, could inflict considerable damage on their enemies without, however, decisively impairing their war effort in so huge an area as is formed by the land mass between the Channel and the Pacific.

Even if it were assumed that, in the end, the West would win such a war, what would be the result? A world still poorer, more miserable, more cynical, and still more liable to epidemics than our present post- or pre-war period would emerge on the aftermath of the Third World War. More likely than not, such a world would have to be rebuilt in the image of the defeated enemy. It probably would be autocratic and, terminology apart, be practically indistinguishable from any unfree society that at present disgraces the surface of the earth. Thus, if the Western world wants to play its enemies' game, aggressive war would be the surest shortcut there is on the one-way road to Moscow. If the West is true to any of the values in which it believes, it has a vested interest in peace.

Admittedly, similar arguments may be put forward to prove that the Soviet Union has a corresponding vested interest in peace. Yet the statesmen of the West and the overwhelming part of public opinion in Western countries believe this to be true only on one assumption. The West must be so strong in its defences that the leaders of the Soviet Union do not consider war to be their easiest line of advance. This means, however, that the Western powers must continue to rearm and, indefinitely, to produce enormous quantities of superior weapons only to throw them away when still more novel and effective arms become available.

The leaders of the Soviet Union can take life much more easily. If they can work on the assumption that Western armaments are defensive, they need only produce the prototypes of the most advanced types of armaments. Thus, they are able to maintain their place in the rearmament race at much less cost. From this point of view, the increasingly impenetrable character of the Eastern world is an inestimable asset. It would greatly assist any Eastern statesman who had enough sense of humour and common sense to play such a gigantic game of bluff.

At the same time, the Eastern world is still free to proceed on other lines. If the Western world has to divert money and man-power on

the scale necessary to defend half a world, it will have seriously to limit its economic and social advances. Thus, large sections of its population are bound to remain discontented. The hinterlands of the Western world—Latin America, Non-Communist Asia, the Mediterranean and Africa—are especially liable to Communist penetration.

The alternative character of the Eastern menace creates a painful dilemma for the Western world. It cannot be solved by any panacea, but only by the most resolute and judicious use of all the resources of the countries outside the Soviet orbit. They must allocate to collective defence the minimum of man-power and finance that is required to make expansion by means of war an unattractive proposition to the Soviet Union and employ the maximum that can be spared for constructive measures, which will create a vested interest in the Western way of life among the underprivileged in the Western realm. Economic and social international co-operation are the first means to this end. Alone, however, they cannot suffice. Man may be a social animal. But he is an animal of a peculiar kind, an animal which requires a purpose in life.

THE UNITED NATIONS: FUNCTIONAL INTERNATIONAL CO-OPERATION

'Defence is of more importance than opulence.' Adam Smith,
The Wealth of Nations (Bk. IV, Ch. 2—1776).

FUNCTIONAL international co-operation is an ambiguous term. It may stand for a specific approach to the solution of international problems, but it has come to mean more particularly international co-operation in economic, social, cultural and educational matters. This restrictive use of the term is not accidental.

In principle, any social question can be treated from a functional point of view. Then, ends and means are considered with sole reference to circumstances which are intrinsically relevant to the constructive solution of the problem in hand. Conversely, extraneous factors are ignored. Thus, to any extent to which international functional co-operation requires a curtailment of sovereignty, it is assumed that, in the interest of the task in hand, States are willing to acquiesce in a corresponding restriction of their freedom of action.

Functional co-operation in this sense is a typical community attitude. An international community would be expected to approach any vital problem in this spirit, whether it were that of peace-making, of peaceful change, of collective security, of disarmament or of economic, social or cultural co-operation.

On the levels of the League of Nations or of the United Nations, it would be stretching a point to interpret the policies of the powers in terms of functional co-operation. As of old, their policies in any of the central spheres of these comprehensive international institutions are guided by more or less narrow views of their own sectional interests. In other words, whatever phraseology States may employ, they still deal with the most vital issues of international relations in a typical society mentality.

To call international economic, social or cultural co-operation functional, is to imply that, in these fields, divergent State interests do not exist or that they are, or are likely to be, successfully co-ordinated in a community spirit. What truth is there in this charitable thesis ?

FUNCTIONAL INTERNATIONAL CO-OPERATION
DURING THE FIRST WORLD WAR

In each of the contending camps, the emergency of the First World War led to a large measure of wartime socialism. The supreme need which gave rise to such large-scale planning called for co-ordination no less on the inter-Allied levels than within each of the belligerent nations. While the war lasted, the illusion could be cherished that national economies ceased to be the basic units and had become dovetailed into larger and more complex forms of economic organisation.

Corresponding with the greater intensity of the war effort required, Germany increasingly co-ordinated the economies of the Central Powers and those of the enemy territories under occupation into those of a Continental *bloc*. This form of wartime organisation was natural for a contiguous area. It agreed, too, with the German propensity for centralisation and domination and with post-war projects for a *Mitteleuropa* under German rule.

The Allied Powers proceeded in a different way. In August, 1914, the *Commission Internationale de Ravitaillement* was established. Its function was to co-ordinate Allied orders for their armed forces. Two years later, the Wheat Executive was created. It purchased wheat and, subsequently, all other cereals for the Allied Powers and was responsible for the allocation of these joint purchases. Joint Allied control of shipping was achieved only under the pressure of Germany's unrestricted submarine warfare. In December, 1917, the Allied Maritime Transport Council was established. In the Allied war effort, transport was the decisive factor. Thus, this Council became the linchpin of inter-Allied economic co-operation.

When the United States entered the war, economic co-operation between her and Great Britain soon proceeded on the basis of complete mutual trust. In Mr. Churchill's vivid description :

'We "carried on the war in common" in every sense of the expression. We transferred masses of every kind of material, in every stage of production, from one ledger to the other in accordance with our very different needs as easily as two friends share a luncheon-basket. There was no rigmarole or formalism in our affairs. We ransacked our cupboards to find anything the American troops in France required, and the Americans on the other hand, once the case was clearly explained in conversation, drew without hesitation from their own remoter programmes for our more urgent needs' (*The World Crisis 1911-1918*, vol. 2, 1939).

In his classic on *Allied Shipping Control* (1921), Sir Arthur Salter, the former Director of Ship Requisitioning and Secretary of

the Allied Maritime Transport Executive, explained the driving force behind this apparently astounding progress in international economic co-ordination: 'The conditions of the war, and the imperative need for unity of Allied action in face of a common enemy, created a kind of hothouse in which international co-operation, normally a delicate plant of slow and precarious growth, developed in a few months to a completeness of form and structure which it must otherwise have taken many years to achieve.' When the Allied and Associated Powers had achieved their common objective, that is to say, when they had defeated the Central Powers, the motive power behind this experiment vanished. Economic demobilisation was as precipitate as that of the Allied armed forces. These tendencies had manifested themselves even before the Peace Conference met.

In the last few months of the First World War, the Allied and Associated Powers had discussed plans for the transformation of the Allied Maritime Council into a General Economic Council. In this way, the comprehensive inter-Allied machinery for supply and enforcement of the blockade against the Central Powers was to be made available for purposes of post-war reconstruction—in particular, for the supply of food and raw materials to Central and Eastern Europe.

This scheme was in line with Mr. Churchill's imaginative suggestion, on the cessation of hostilities with Germany, to send immediately ships 'crammed with provisions' to Hamburg. As, however, Germany had merely asked for an armistice, and not for a preliminary peace, the Allies maintained their blockade of the Central Powers, and nothing came of Mr. Churchill's proposal.

Nor was there any chance of realising the wider scheme. The United States feared that the establishment of a General Economic Council might affect the interests of the American farmers unfavourably and might, conceivably, lead to a dictation of prices for agricultural products by the European consumers. A similar fate befell Briand's proposal for a Bank for International Co-operation. War-time co-operation between the central banks of the Allies was one thing. A proposal for international financial co-operation between governments in time of peace was rank heresy by all the canons of orthodox liberal doctrine. High finance and big business added their powerful pleas for a return to normality, and their views—and vested interests—prevailed. What little the statesmen of 1919 knew of international economics had grown in the same soil as the more pragmatic knowledge of the business men and bankers behind them.

FUNCTIONAL INTERNATIONAL CO-OPERATION
IN THE COVENANT OF THE LEAGUE OF NATIONS

At the Paris Economic Conference of June, 1916, problems of post-war economic reconstruction had been discussed by delegates from Belgium, France, Great Britain, Italy, Japan and Russia. The resolutions of the Conference were framed entirely in terms of economic defence against any post-war attempts by the Central Powers to establish the 'domination of the latter over the production and the markets of the whole world and of imposing on other countries an intolerable yoke' (H. Temperley, *A History of the Peace Conference of Paris*, vol. V, 1921). The Allied answer was an extensive programme of economic nationalism, protectionism and discrimination.

The President and Administration of the United States were seriously disturbed by these tendencies. Even after the entry of the United States into the war, the basic conflict between the liberal doctrines of President Wilson and the protectionist policies of his Allies remained unresolved. President Wilson's views found a moderate expression in Point Three of his Fourteen Points: 'The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.'

The United States, however, herself practised protectionism on a considerable scale. Her prescriptions for the world at large were suspect not only because of rather blatant discrepancies between principle and practice, but also because of the United States' newly acquired position as the world's leading industrial and commercial nation and as the world's largest creditor. If other nations adopted Wilson's economic creed, this would have suited the national interests of the United States perfectly. Yet, with the reservation 'so far as possible', Point Three gave all the required loopholes to the Allied Powers.

American and British drafts for a Declaration for Equality of Trade Conditions were discussed by the two delegations before the Peace Conference opened, but both thought it wiser to proceed on more cautious lines. Either such a Declaration would be riddled with exceptions and reservations, or it would have required a complete revision of the preferential and colonial tariffs of the Principal Allied and Associated Powers. None of them seriously contemplated such a revolutionary step.

During the drafting of the Covenant, the Commission of the Peace Conference on the League of Nations considered summarily some vague Belgian, French and Italian proposals to give the

League competences in the field of international economic relations. Hymans (Belgium) suggested a Permanent Commission on Agriculture which might facilitate the specialisation of agricultural production according to the climatic and geographic position of the various countries, and assist in the international exchange of raw materials.

Orlando (Italy) squashed this idea by pointing out that all the essential functions of such a Commission were already fulfilled by the International Institute of Agriculture in Rome. In its turn, the Italian Delegation advocated acceptance of the principle that 'the international distribution of the foodstuffs and raw materials required to sustain healthy conditions of life and industry must be controlled in such a way as to secure to every country whatever is indispensable to it in this respect'. In addition, an Economic Commission under the direction of the League Council was to provide the necessary data for the solution of international economic and financial problems in order to 'facilitate the progressive and harmonious co-ordination of the interests of every country in this field'.

The French, too, favoured some kind of international organisation of production and an agreement on post-war budgets. The latter proposal was so indefinite that it could mean anything or nothing. In his notes for the information of President Wilson, Miller summarised this suggestion as amounting to a proposal for a 'joint post-war budget of the States', but he probably read much more into this scheme than was ever meant by the French Delegation. In any case, any such plan was anathema to the United States as it might have implied some reduction in the American war loans to the Allied Powers.

In the end, a rather lame *pactum de contrahendo* was all that emerged from the Commission's labours in the field of international economic co-operation. Article 23 (e) of the Covenant provided for freedom of communications and of transit and equitable treatment for the commerce of all members of the League, but only 'subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon'. In its Advisory Opinion on *Railway Traffic between Lithuania and Poland* (1931), the Permanent Court of International Justice had occasion to comment on the practical meaninglessness of these pledges.

To proceed in this happy-go-lucky fashion was justifiable only on the assumption that State practice in the years to come could be expected as a matter of course to return to pre-1914 axioms of economic *laissez-faire*. This meant ignoring, however, the growth of powerful trends in rather different directions: economic nationalism was growing, and so was monopoly capitalism. In addition, there

were the problems of reversion of wartime production and trade to conditions of peace and of reparations. In such an economic environment, even the ideal of a return to free trade could be attained only by conscious international planning towards this end.

The one constructive contribution to the solution of economic and social problems made by the Peace Conference was the establishment of the International Labour Organisation.¹ In the Preamble to the Labour sections of the Peace Treaties of 1919, the conviction was expressed that peace could only be established if it was 'based upon social justice'. Existing conditions were characterised as 'involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that peace and harmony of the world are imperilled, and an improvement of those conditions is urgently required'. The problem was held to be soluble only by joint universal action; for 'the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries'.

The Peace Conference broke new ground in attempting to minimise the vertical divisions of national delegations in the organs of the International Labour Organisation. The introduction of the tripartite principle offered a constructive alternative. Moreover, voting in the new organisation was to be based on the rule of a qualified majority. The Conference, however, stopped short of establishing a truly legislative international institution and left the final decision on any contemplated improvements in labour legislation with each member of the Organisation.

The fact that the International Labour Organisation was established at all was due to pressure from two different quarters. In the first place, this international institution was meant to be the redemption of the promises made during the war to Labour in all the Allied countries. Secondly, the Peace Conference was haunted by the fear of Communism. The new body was to help the leaders of the Second International and of the Trade Union movement to immunise the working classes against the virus of social revolution. As William Pitt had put it in 1796, 'with reform you disarm the Jacobins of their most dangerous weapon'.

'POLITICS AND ECONOMICS IN THE INTER-WAR PERIOD

Reality soon brushed aside the illusions of statesmen on the adequacy in the post-1919 period of *laissez-faire* doctrines in national and international economics.

Return from wartime to peacetime economics left most governments the alternative either of temporary chaos and mass unemployment or State intervention in the economic and financial spheres. Compared with wartime standards, State intervention had everywhere diminished, except in the Soviet Union. Yet it was still far above the pre-1914 level. Even when the needs for readjusting economic life to peace had been met, governments could only temporarily afford to recede from the economic plane.

Prospects of ever-recurring economic depressions and crises kept alive the demand from below for protection by the State. Faced with the competition of openly interventionist mass parties, even liberal and conservative governments found it necessary to steer a middle course. In a worldwide economic system, it was, however, beyond the power of any single government effectively to protect its national economy against the havoc wrought by blizzards such as the world economic crisis of the early 'thirties. Without common international action it was each for himself; all that individual governments could do was to adopt questionable stop-gap measures on the national scale. Increasingly, the free movement of goods, capital and man-power was impeded. In face of a capitalist economy run wild, frightened governments could only reply with protectionist tariffs, import quotas, exchange control, exclusive bilateral trade and barter agreements, acquiescence and participation in the control of commodities at monopolist price levels, and limitation of immigration.

It would be a dangerous over-simplification to argue that economic liberalism was wholly, or even mainly, abandoned because of pressure from below. By ruthless application of the principle of the survival of the fittest, 'free' enterprise itself helped to make active State intervention in economic life necessary. By the end of the First World War, organisation of industry and trade had replaced free competition on a large scale in most capitalist States. According to the Report of the Committee on Trusts of 1919 (Cmd. 9236), 'trade associations and combines are rapidly increasing in this country and may within no distant period exercise the paramount control in all important branches of British trade'.

In the 'thirties, this process became still more accentuated and the connection between cartels and combines and their governments—with the exception of the United States—became still more intimate. According to Professor Mason's conservative estimate, 42 per cent of world trade between 1929 and 1937 was subject to cartel agreements or similar arrangements. Even the Soviet Union took part in three commodity agreements and eight international cartel agreements. Cartels for the regulation of production, the fixing of prices and the

division of world markets required government support to secure their home markets and to use tariffs as a means of bargaining. Some of these cartels even thought in terms of using their governments as a suitable agency for exercising pressure on outsiders.

This object was stated in the bluntest language in the Düsseldorf Agreement of March, 1939 between the Federation of British Industries and the *Reichsgruppe Industrie*, negotiated with the active assistance of Mr. R. S. Hudson, Parliamentary Secretary of the Department of Overseas Trade, and officials of the Third Reich. Point Eight of this Agreement provided :

‘The two organisations realise that in certain cases the advantages of agreements between the industries of two countries or of a group of countries may be nullified by competition from the industry in some other country that refuses to become a party to the agreement. In such circumstances, it may be necessary for the organisation to obtain the help of their governments and the two organisations agree to collaborate in seeking that help’ (E. S. Mason, *Controlling World Trade*, 1946).

Owing to the general political repercussions of Hitler’s invasion of Czechoslovakia, this particular Agreement never came into operation. It is still indicative, however, of the trend towards the merging of State and monopoly both in capitalist and planned economies. For different reasons and with different objects, both managerial and labour interests clamoured for, and obtained, increased State intervention in economic and financial affairs. In taking the road towards closed economies and economic nationalism, the governments of the inter-war period were not merely giving way to sectional pressure groups. Their reasoning was strongly reinforced by considerations of foreign policy and defence.

In a system of power politics—and the same applies to any ineffective collective system—statesmen ignore at their peril the primacy of policy in international relations and the priority of foreign policy over internal policy. Although second in importance only to politics, international economics still remain a function of politics, and power politics postulate power economics.

In the abstract, much is to be said for a system of free trade. Then every country specialises in the production and manufacture of goods for which it is predestined by climate, geography and native skill. The underlying ethical assumption is that the highest economic good consists in producing at the cheapest price the greatest quantity of any particular article.

So long, however, as there is any marked discrepancy between the prices of primary and manufactured products, this ideal suffers from a serious intrinsic defect. Such a system would condemn coun-

tries which primarily produce raw materials to content themselves indefinitely with lower standards of living than those which are generally attained in industrialised economies. Thus, on economic and social grounds alone, the former would tend to raise their own standards of living by the creation of vigorous home industries. At this stage, the pre-established harmony of a free trade world would break down in any case, or could be sustained only artificially by a planned adjustment of the price levels between primary and manufactured products.

Political necessities of a still more compelling character point in the same direction. So long as war is a possibility, every peacetime economy must be visualised as a potential wartime economy. In the interest of their competitive capacity on the world market, industrialists may wish to keep down wages and the cost of living. Workers may share this interest in a low cost of living in order to secure the highest possible real wage. Thus, both sides of industry may be opposed to any policy of subventioning agriculture at home and of protecting it by tariffs against foreign competition.

Yet, whatever view a government may take of the non-economic value of a flourishing peasantry, it cannot ignore the importance of home agriculture in time of war. In the case of an island like Great Britain, this is not only a question of the control of the seas, but also of the available, and never sufficient, shipping space in time of war. The Second World War taught this lesson even to the United States. Two examples will suffice to illustrate the problem in the more complex nexus of mid-twentieth century industrial war needs.

The temporary loss of the supplies of natural rubber from South-East Asia forced the United States to rely on synthetic rubber and to build up a powerful chemical rubber industry. Irrespective of whether synthetic rubber can compete economically with the price of natural rubber in time of peace, the defence interests of the United States demand the maintenance of this industry at a substantial level of the American consumption of rubber.

Similarly, when the United States was cut off from the tin produced in Malaya, Netherlands-India and Siam, she had to turn to the Bolivian tin mines which worked at a considerably higher cost. In the inter-war period, these mines had been kept in production only on British initiative, as the British smelting plants were especially suited for the use of Bolivian tin ore. During the war, sufficient shipping space was not available for the maintenance of tin ore shipments from Bolivia to Great Britain on the pre-war scale. In any case, there was the risk of the heavy toll to be paid to German submarines. Thus, the United States was prepared to take over the

handling of the Bolivian tin ore, but found that her smelters were unsuitable for this type of ore. A new plant was built and, although its refinery costs are higher than those which use tin ore from South-East Asia, strategic considerations make it worthwhile to keep this plant in operation.

In terms of perfection, probably only the United States and the Soviet Union came during the inter-war period—and come today—anywhere near attaining anything like self-sufficiency. The Second World War revealed how far each was from achieving this objective. Yet what counts is not absolute economic self-sufficiency. Relative economic—like political and military—superiority over the enemy is the decisive factor. On every occasion, this has to be calculated in terms of the resources of actual and potential allies and of the capacity to keep open vital supply lines on land, at sea and in the air. Even a small State cannot wholly ignore the problem of its wartime economy. Given a number of other favourable factors, such as efficient armed forces and suitable geographical conditions, survival itself may depend on sufficient stores of raw materials and food, and on the existence of a number of armament and aircraft factories in protected positions. Without them, a State may become the prostrate victim of aggression. With them, it may be the spearhead of a mighty counter-coalition.

All these considerations combined led everywhere during the inter-war period to a considerable extension of State activities in the economic and social fields and to the growth of virulent economic nationalism. The lead, with both eyes on war, in the move towards autarchy was taken by the aggressor nations. Haltingly, the Western democracies followed suit, still casting regretful glances at the lost paradise of the pre-1914 world.

The only place where faith in free trade still appeared to flourish was Geneva. During the false dawn of the Locarno era, the League of Nations embarked on the venture of the First World Economic Conference. In the Resolution by which the Conference was initiated, the League Assembly declared itself to be 'firmly resolved to seek all possible means of establishing peace throughout the world, convinced that economic peace will largely contribute to security among the nations, persuaded of the necessity of investigating the economic difficulties which stand in the way of the revival of general prosperity, and of ascertaining the best means of overcoming these difficulties and of preventing disputes'. To use the words of the Report of the Conference (C.E.I. 46, Vol. I—1927), its recommendations were 'not entirely new'. They were in the authentic pre-1914 tradition and called with utter simplicity for a 'return to the effective liberty

of international trading' and for a reduction of tariff barriers. Needless to say, State practice completely ignored these exercises in day-dreaming and marched on busily towards economic nationalism.

By the time the second World Economic Conference met in London in 1933, the gold standard, another major foundation of liberal trade, had broken down. Thus, the most urgent task with which the Conference was faced was to find an alternative method of stabilising the currencies of the world. In the words of a statement issued by President Roosevelt shortly before the opening of the Conference, one of its main functions was to 'establish order in place of the present chaos by a stabilisation of currencies'. In the course of the general discussion at the Conference, Mr. Cordell Hull took up the same theme: 'The distressed peoples in every land expected concord, co-operation and constructive results from the Conference; the success or failure of the Conference would mean the success or failure of statesmanship throughout the world.'

Agreement at the Conference appeared to be in sight. At the decisive moment, however, President Roosevelt wavered. Not yet considering himself strong enough to give the courageous lead which, at later stages, became one of his characteristic and most engaging features, he thought it necessary to disavow his own Delegation. 'The President 'saw no utility at the present time in temporary stabilisation between the currencies of countries whose needs and policies are not necessarily the same. Such stabilisation would be artificial and unreal and might hamper individual countries in realising policies essential to their domestic problems'.

However disappointing, Roosevelt's statement had at least the merit of frankness. It offered a splendid illustration of the contrast which had been so ably drawn at the Conference by Mr. Cordell Hull between the common interest and short-range disharmonies in national interests. Nobody was more shocked than Mr. Cordell Hull when the President solved the dilemma on the lines of least resistance to the American pressure groups.

The only one who got some change out of the Second World Economic Conference was the indefatigable M. Litvinov. Apart from hunting successfully for autographs on his political non-aggression treaties, he propagated two inventions of his fertile brain: treaties of economic truce and a protocol of economic non-aggression. Other delegations could not help seeing the unkind implications of these proposals. They did not cherish the suggestion that their past experiments in economic nationalism had amounted to economic warfare, nor were they willing to agree to any outlawry of discriminatory measures in the future. Thus, the Soviet Delegation received sym-

pathetic responses only from Eire, Poland and Turkey and had to suffer the indignity of seeing its proposals buried in one of the many sub-committees of the Conference. This was hard to bear for delegates who, at the Conference, had depicted their own country as one to which 'the ideas of economic nationalism were absolutely foreign'. However mischievously, M. Litvinov summed up accurately enough the achievements of the Second World Economic Conference: 'The whole work of the Conference, all the work of its numerous commissions and sub-commissions during the past six weeks had been deeply permeated by one fundamental mood, one aspiration: adjournment.'

The strange way in which both the World Economic Conferences went about their business might lead to the conjecture that well-meaning but naïve delegates really meant what they said and only gradually learned from bitter experience the sad truth about the function of economics in a system of power politics in disguise.

In the case of some of the American delegates, it really looked as if they meant what they said. They were honestly prepared to apply their standards of reciprocity and individual morality to international affairs in general and to international economic relations in particular. Mr. Cordell Hull especially appears to have been such a white raven. European statesmen knew—or ought to have known—better. They had been able to observe at close quarters the fantastic story of German reparations and the treatment of Austria in the inter-war period.

In the first phase of German reparations, the French object was blatantly political. It was not primarily payment of reparations, but the use of this title-deed as a means for the indefinite political control of Germany. Anglo-Saxon insistence on reduction of reparations to figures which were compatible with German resources was no less influenced by political considerations. The necessary implication of this policy was the liberation of Germany from French hegemony and the re-establishment of a balance of power between the two former enemies.

Not until the failure of the French occupation of the Ruhr, was France sufficiently isolated to make her yield to the pressure of the Anglo-Saxon powers. Matters could then be left to high finance. This achieved its task with remarkable unawareness of its political functions or—if this interpretation does not do justice to the intelligence of Wall Street—with an admirable capacity for hiding any possible awareness of its own political functions. Thus, the Report of the Dawes Committee opened with the following disarming words: 'We have approached our task as business men anxious to obtain

effective results. We have been concerned with technical, and not the political, aspects of the problem presented to us.' Whether or not Germany was to fulfil her reparation obligations, it had become psychologically impossible any longer to enforce Allied demands. As the world was not prepared to accept German exports, the business men's approach to reparations under the Dawes Plan meant the liquidation of German reparations within a limited period or the payment of reparations by the victors themselves by means of generous loans to Germany. The experts, who were responsible for the Young Plan, had proposed a constructive way out of this dilemma. They realised that, short of cancellation, the problem of reparations could only be solved by a considerable expansion in German exports. This, however, had to be done in a manner that would not be detrimental to the creditor countries.

The answer was to be the Bank for International Settlements. According to the Young Plan (Cmd. 3343), one of the main functions of the new international Bank was to 'promote the increase of world trade by financing projects, particularly in undeveloped countries, which might otherwise not be attempted through the ordinary existing channels'. The Bank's Board of Directors was, however, over-anxious not to interfere with the business of private banks. It did not, therefore, display any undue initiative in the virgin field that had been mapped out for it by the authors of the Young Plan. In any case, it had little time to settle down to its task; for, with the Lausanne Conference of 1932, the reparations problem had ceased to exist. Papen's defiance of the reparation creditors, strengthened by the background threat of a still more radical nationalist movement in Germany, had the desired effect. The wheel had come full circle. Power economics were defeated by power politics or, more accurately in this particular case, by sheer bluff and effrontery.

The example of Austria is no less instructive. The disruption of the Austro-Hungarian Empire had left Austria in a state of suspended animation. One-third of its population was concentrated in Vienna. The capacity of Austrian industry was out of proportion to Austrian needs, and the young State was faced with mass unemployment. Union with Germany was unacceptable to the Allied and Associated Powers and was bitterly resisted by the successor States in the territories of the Dual Monarchy.

In order to keep the Austrian movement for *Anschluss* with Germany in check, the Allies did not seriously attempt to enforce the non-territorial provisions of the Peace Treaty of St. Germain. The Austrian Reparations Commission transformed itself into an international relief agency. Under the auspices of the League of

Nations, Austria's financial reconstruction was undertaken by means of an international loan. The price which Austria had to pay for this assistance was political. Over and above the obligations undertaken in the Peace Treaty of St. Germain to maintain her political independence, Austria had to sign a further pledge. In the Geneva Protocol of October 4, 1922, she undertook to 'abstain from any negotiation or from any economic or financial engagement calculated directly or indirectly to compromise this independence'.

In March, 1931, Germany and Austria announced the conclusion of a customs union between themselves. Then power economics came into full play. The *Kredit-Anstalt*, the leading Austrian banking institution, collapsed. The Bank of England was prepared to help, but the Bank of France held aloof. The *Reichsbank*, too, suffered considerable withdrawals of short-term credits by foreign creditors. Austria and Germany had to give in. The formal announcement to this effect in Geneva and the proceedings in the Hague before the Permanent Court of International Justice formed merely the political and legal façades for a struggle which had been fought and won by France on the plane of international finance.

If any further evidence of the primacy of international politics over economics in the inter-war period is needed, there was the Italo-Ethiopian War and the diplomatic moves of the powers at Geneva. The self-limitation of the sanctionist States to the application of non-effective economic sanctions and the non-application of the oil sanction were themselves a confession of the overriding character of international politics over economics.

Still more did this become apparent from the proposals made by Sir Samuel Hoare at the League Assembly of 1935. He put the most charitable interpretation on the demands of the expansionist States: 'It is the fear of monopoly—of the withholding of essential materials—that is causing alarm. It is the desire for a guarantee that the distribution of raw materials will not be unfairly impeded that is stimulating the demand for further inquiry. So far as His Majesty's Government in the United Kingdom is concerned, we should, I feel sure, be ready to take our share in an investigation into these matters.'

Actually, there was little fear of monopoly in the inter-war period. There was a glut of primary products, and producers were only too anxious to sell their products at cut prices to any purchaser. Currency problems existed, but in the case of the 'have-not' States, these were artificially aggravated by the rearmament policies of the dictators. What Hitler, Mussolini and the Japanese warlords wanted were not raw materials, but war materials. Mr. Eden put his finger

on the decisive point when, in a speech in his constituency in December, 1936, he stated the obvious: 'This country cannot be expected to render help to others whether in the economic or in the financial sphere if the only result of such action is to be a further piling up of armaments and a consequent further stress and strain upon the fabric of world peace.'

To furnish potential enemies with the sinews of war may be the purest application of the principles of profit economics, or it may be forced on a country as a means of appeasement. In the former case, capitalist wisdom is political lunacy and a crime in ethics—if not in law—against one's own community. In the latter case, it is the political decision which matters, not its execution in terms of business contracts.

The inter-war period witnessed instances of both forms of pre-belligerent assistance to future enemies. Between 1929 and 1932, British armament exports to Japan rose from £98,200 to £230,000. Netherlands and United States companies supplied most of the oil required by the Japanese war machine. By 1938, private enterprise in the British Empire and the United States supplied Japan with 77 per cent of her war materials. Business with Nazi Germany was no less flourishing. Aero-engines were exported from the United Kingdom to Germany or manufactured under American licences in Germany. One last illustration of this traffic, which is described in detail by F. Brockway and F. Mullaly in their *Death Pays a Dividend* (1944), appeared in *The News Chronicle* of August 19, 1939: 'Huge German orders for rubber and copper were executed in London yesterday, regardless of costs. The buying of nearly 3,000 tons of copper sent the price rocketing up 18s. 9d. to £44 18s. 9d. a ton. Already Germany has bought over 10,000 tons this month in London alone.'

Yet business men can at least plead that their social function consists in making profits and accumulating capital and that it is for governments to give the business community the red light when the national interest demands the cessation of such activities. Moreover, were such deals so different from those that were contemplated by British and French appeasers in official quarters and practised with such exemplary self-denial by their *confrères* in the Kremlin?

The *Dirksen Papers*, published by the Ministry of Foreign Affairs of the Soviet Union in 1949, throw a curious light on the intentions of British appeasers in the period between Hitler's invasion of Czechoslovakia and the outbreak of the Second World War. Until the corresponding British documents are available, the record of the

former German Ambassador of the conversations between Wohltat, Goering's Economic Commissioner for the Four-Year Plan, and his British contacts can only be accepted with due reserve. Assuming, however, that this report, written by von Dirksen in September, 1939, is anywhere near the truth, at least one point must be conceded to those responsible for these conversations. They were fully alive to the fact that economic appeasement was to be part of a more comprehensive programme of political appeasement.

According to von Dirksen's Report :

'The initiative came from Sir Horace Wilson, Chamberlain's closest collaborator and adviser. When Herr Wohltat was in London for the whaling negotiations in July, Wilson invited him for a talk and, consulting prepared notes, outlined a programme for a comprehensive adjustment of Anglo-German relations. The programme envisaged political, military and economic arrangements. In the political sphere, a non-aggression pact was contemplated, in which aggression would be renounced in principle. The underlying purpose of this treaty was to make it possible for the British gradually to disembarass themselves of their commitments towards Poland, on the ground that they had by this treaty secured Germany's renunciation of methods of aggression. In addition, a pact of non-intervention was to be signed, which was to be in a way a wrapper for a delimitation of the spheres of interest of the Great Powers. In the military sphere, negotiations for an agreement regarding limitation of land, naval and air armaments were envisaged. In the economic sphere, comprehensive proposals were made: negotiations were to be undertaken on colonial questions, supplies of raw material for Germany, delimitation of industrial markets, international debt problems, and the application of the most-favoured nation clause. . . The importance of Wilson's proposals was demonstrated by the fact that Wilson invited Wohltat to have them confirmed by Chamberlain personally, whose room was not far from Wilson's. Wohltat, however, declined this in order not to prejudice the unofficial character of his mission.'

The publication of these documents by the Soviet Union was meant as a counterblast to the compromising record of their own relations with the Third *Reich* during the period between 1938 and 1941. There is, however, this difference between the policies of the United Kingdom and the Soviet Union in the summer of 1939. One did not give way to the lures of appeasement; the other became an accessory before the fact to German aggression. Yet, in one respect, British and Soviet appeasers of German expansionism were equally clear-headed. They accepted consciously the political implications of their schemes for economic co-operation.

As appears from the Memoranda of the German official in charge

of the execution of the German-Soviet Trade Agreement, right to the bitter end, the Soviet Union did her best to live up to German expectations. According to Schnurre's Report of May 15, 1941 (United States Department of State, *Nazi-Soviet Relations 1939-1941*, 1948), the Russians did their utmost to keep open the transit route from East Asia to Germany. In April, 1941, alone, arrangements were made for the transport of 4,000 tons of rubber through the Soviet Union. Half of this amount was transported on special trains. Between January and May, 1941, the Soviet Union delivered to Germany from her own production 632,000 tons of grain, 232,000 tons of petroleum, 23,500 tons of cotton, 50,000 tons of manganese ore, 67,000 tons of phosphates and 800 kilograms of platinum. Schnurre added: 'I am under the impression that we could make economic demands on Moscow which would even go beyond the scope of the Treaty of January 10, 1941, demands designed to secure German food and raw material requirements beyond the extent now contracted for.' Hitler, however, treated Soviet self-abasement as contemptuously as he had interpreted the overtures of the British appeasers: as a revealing symptom of the political and military weakness of countries which were ripe for German conquest.

In sum total, international economic and social co-operation during the inter-war period did not show any marked differences from political international co-operation. The rather overrated exceptions of the International Labour Organisation and of the International Drug Control apart, international economic institutions showed little advance over corresponding institutions of the pre-1914 world. The Economic and Financial Organisation of the League of Nations limited itself discreetly to the collection and dissemination of competent surveys and statistics and of unheeded advice, but was not in a position to check the trends towards economic nationalism and power economics.

In the field of cultural international co-operation, the record is similarly meagre. The International Institute of Intellectual Co-operation in Paris was at the most a modest beginning. Its most promising work consisted in the organisation of international studies conferences. In this way, specialists on the various aspects of world affairs were brought regularly in contact with each other and taught to see each other's point of view. These efforts, however, were too limited in scope and too sporadic to exercise much influence on the formation of national public opinion in the participating countries. Functional international co-operation in the inter-war period remained an aspiration, if not a myth.

FUNCTIONAL INTERNATIONAL CO-OPERATION
DURING THE SECOND WORLD WAR

In the first two years of the Second World War, the defection of France, the need to support financially weak Allies, and the insistence of America on the cash-and-carry formula brought the United Kingdom close to financial exhaustion. In a letter of December 8, 1940, Mr. Churchill frankly put the British position before President Roosevelt: 'The moment approaches when we shall no longer be able to pay cash for shipping and other supplies' (W. S. Churchill, *The Second World War*, Vol. 2: *Their Finest Hour*, 1949).

The President responded with speed, and the Lend-Lease Act of March 11, 1941, was both an acceptance of the totalitarian challenge and a generous tribute in the nick of time to Britain's lone fight. Under this Act, the President was authorised to 'sell, transfer title to, exchange, lease, lend, or otherwise dispose of, . . . any defence article' to the 'government of any country whose defence the President deems vital to the defence of the United States.' The term 'defence article' was defined in the widest sense to include 'any weapon, munition, aircraft, vessel or boat; any machinery, facility, tool, material, or supply necessary for the manufacture, production, processing, repair, servicing, or operation of any article described in this sub-section; any component material or part of or equipment for any article described in this subsection; any agricultural, industrial or other commodity or article for defence'.

This imaginative deed eliminated at one stroke the problems of exchange, war loans, quotas and tariffs that might otherwise have impeded American help to Britain. It abolished not only the dollar symbol, but also a host of administrative barriers to effective economic warfare. In President Roosevelt's own words, the purpose of the Lend-Lease Act was to enable the United States to become the arsenal of democracy—and, as events were to prove, not of democracy alone.

Still more important, the lead taken by the United States at a time when she was not yet a belligerent, and when the Soviet Union was still aiding and abetting the aggressors, set the tone for the war-time relations between the United Nations. The principle was established that all their resources formed a common pool and were to be allocated according to the requirements of overall strategy. When the United States entered the war, individual lease-lend and mutual aid agreements consolidated the temporary community of the United Nations still further. In this way, the Allies speedily implemented their undertaking given in the United Nations Declara-

tion of January 1, 1942, that they would employ their full resources against their common enemies.

In the United Kingdom and, to a lesser extent, in the United States wartime needs led to a vast expansion of government control over labour, industry, finance and trade under the central direction of the Ministry of Production in Great Britain and of the War Production Board in the United States. In order to supplement the ordinary channels of international trade, the United Kingdom Commercial Corporation was established in April, 1940. In 1943, a number of separate United States agencies in the field of international economic relations were amalgamated into the Foreign Economic Administration.

Early in 1942, President Roosevelt and Mr. Churchill decided on the creation of a number of joint boards. In the course of the war, their number—and that of their committees and sub-committees—grew until they covered every essential aspect of inter-Allied economic wartime co-operation. Most of those boards were joint Anglo-American undertakings. In some of them, other members of the British Commonwealth, especially Canada, participated. Although many of the United Nations did not share in the privileges and responsibilities of directing these activities, nevertheless they all loyally carried out the functions allocated to them at the production end.

The day of functionalism had dawned. Advocates of this approach to international co-operation had no longer to rack their brains for minute evidence of embryonic functional international institutions. No more had they to remind the unconvinced of bodies whose very existence was news to the uninitiated. The International Railway Congress and the League of Nations' International Transit Committee were allowed to recede into their relative insignificance. Suddenly, all the essentials of international economic relations had become amenable to functional treatment.

Between January and June, 1942, five powerful functional inter-Allied institutions sprang into being: the Combined Shipping Adjustment Board, the Combined Munitions Assignment Board, the Combined Raw Materials Board, the Combined Food Board and the Combined Production and Resources Board. Combined regional agencies were dovetailed into this organisation, chief among them the Middle East Supply Centre, the Anglo-American Caribbean Commission, and the North African Economic Board. The Commonwealth Supply Board, the Eastern Group Supply Council and the West African Supply Centre, organisations established on the initiative of the United Kingdom or of the members of the British Commonwealth, were also fitted into the inter-Allied scheme.

In spite of the differences and diversities between each of these improvised experiments in functional and regional co-operation, common features emerge. The guiding principle was that all the resources of the United Nations were treated as one common pool. Allocation depended on the highest need. Co-ordination of effort and planning for increased output were the tasks with which each of these boards was charged. Differences were somewhat summarily adjusted. Mistakes were made, and, sometimes, vested interests had their own way. Yet, in the end, those who acted, and acted quickly, could rely on support from the two leaders whose personal understanding had brought about this astounding feat.

In terms of organisation, too, these combined boards were based on a uniform pattern. In the first place, unlike most peacetime international institutions, they were not the product of formal treaties. When it was a question of sheer survival, the less these agencies were hampered by legalistic restrictions upon their freedom of action, the better they would be able to do their work. Moreover, to proceed by way of conventions would have involved serious delay, and speed was what mattered most. Secondly, and again for the same reason, their powers and radius of operation were defined in the broadest possible terms. Adjustment of their competences between themselves was left to experience. Thirdly, the combined boards were authorised to settle routine matters, defined in a very liberal sense, direct with the relevant national departments. Thus, they were not condemned to move circuitously through the intermediary stages of the national governmental and administrative hierarchies. On an astounding scale, inter-penetration of national and international wartime planning was attained in the relations between the United Nations at war and, in particular, between the British Commonwealth and the United States.

To appreciate the magnitude of the Lend-Lease experiment, a few figures on the assistance given by the United States to the Soviet Union alone must suffice. They do not include the materials supplied to their Eastern Ally by the other United Nations, especially by the United Kingdom. From 1941 to 1945, 16½ million tons of supplies were sent to the Soviet Union in 2,660 ships. The Russians received 500,000 lorries, combat vehicles, motor-cycles and other service vehicles, 2½ million tons of food and nearly 2,000 railway engines, altogether supplies and services to the value of about 11 milliard dollars (J. R. Deane, *The Strange Alliance*, 1947).

By way of contrast, it is salutary to glance at the wartime economic organisation of the aggressors. After Mussolini's ill-fated attack on Greece, Italy was increasingly treated by the Third Reich

as a satellite and fitted into the German economic machine. Like Japan, Germany planned her wartime economy on a very different basis from that of the United Nations. The countries under the sway of Germany, Italy and Japan were not allies or liberated nations. They were objects of exploitation for the benefit and comfort of their overlords. Germany and Japan, too, organised their wartime economies from a functional point of view, yet with a true society mentality. The object was the maximum assistance that could be obtained from the subjected nations. So long as this purpose was served, the interests and needs of the exploited countries were ignored with calculated brutality.

In the countries occupied by Germany and Japan, quisling governments were appointed as the local executive organs and watchdogs of their foreign masters. In Nazi-occupied Europe, industrial war production was concentrated in Germany. Plants in occupied territories were dismantled or fell into disuse owing to lack of raw materials. Railway tracks and mobile transport equipment were removed. Workers were forcibly transferred to Germany. Agriculture was reorganised to provide the maximum of food for Germany. The master race gave an object-lesson to the world at large of the meaning of Hitler's New Order.

Japan applied similar principles in its Asiatic 'co-prosperity' sphere. Each area had to support itself in food supplies but, at the same time, to pay tribute. It was forced to change its agricultural production in accordance with Japanese requirements and yet it failed to receive in exchange for its exports the industrial goods which it needed. The masses, as distinct from the few who made themselves willing instruments of these foreign systems of domination and exploitation, had to face a general decline in their standards of living, and malnutrition, if not actual starvation.

THE CHARTER OF THE UNITED NATIONS AND FUNCTIONAL INTERNATIONAL CO-OPERATION

Knowledge of the sufferings of the nations under the heels of the aggressors assisted the United Nations in shaping their own ideals on economic post-war planning. In general terms, the Atlantic Charter and the subsequent Declaration of the United Nations of January 1, 1942, expressed the resolution of the Allies to 'bring about the fullest collaboration between all nations in the economic field'. In subsequent pronouncements, the statesmen of the United Nations elaborated the general theme. The world was to be reorganised on a basis of co-operation and friendship in economic as in political

affairs. All nations were to be assured equality of economic opportunity. The standards of living were to be raised and freedom from want to be attained under the banner of social security and full employment. Finally, trade policies were to be drastically liberalised, and a reliable system of international monetary co-operation was to be established. The foundations for the realisation of this ambitious programme were laid even before the end of the war.

President Roosevelt used the Lend-Lease Agreements to extract Allied support for a comprehensive scheme of post-war economic co-operation. With far-sighted generosity, the United States agreed that any returns for American aid to be made by the other parties to these treaties were 'not to burden commerce between the two countries, but to promote mutually advantageous economic relations between them and the betterment of worldwide economic relations'. The arrangements to be made were to be 'open to participation by all other countries of like mind'. Their objects were to be the expansion by concerted means of production, employment, and the exchange and consumption of goods, the 'material foundations of the liberty and welfare of all peoples', the elimination of all forms of discriminatory treatment in international commerce and the reduction of tariffs and other trade barriers, and, in general, the attainment of all the economic objectives of the Atlantic Charter.

Thirty-eight States signed Lend-Lease Agreements, or, as in the case of Canada, which did not wish to receive lend-lease help, accepted the principles laid down in Article VII of the Master Lend-Lease Agreement (Agreement between the United States and the United Kingdom, February 23, 1942—Cmd. 6391). According to the *Twenty-Third Report of the President to Congress on Lend-Lease Operations* (1946), United States lend-lease aid from 1941 to 1946 amounted to over 50 milliard dollars. This equalled about 15 per cent of the total war expenditure of the United States. Lend-lease in reverse was just under 8 milliard dollars, and payments for cash sale and under settlement agreements brought a return of another 2 milliard dollars to the United States. Thus, the United States could justly claim that her financial war record offered tangible proof of her firm intention to be, not only a model ally in wartime, but also a model good neighbour in the task of post-war economic reconstruction.

The constructive lead taken by the United States in the foundation and financing of UNRRA augured well for the future.² The foundations of new functional organisations were laid with the creation of an Interim Commission for the Establishment of a Food and Agricul-

ture Organisation of the United Nations (Hot Springs—May, 1943), of an International Monetary Fund and an International Bank for Reconstruction and Development (Bretton Woods—July, 1944) and of an International Civil Aviation Organisation (Chicago—December, 1944).

The International Labour Organisation, too, vigorously reminded the United Nations at war that it was still alive and did not wish to be overlooked in all this functional planning for the brave new world. Its future was under a cloud. It was known that the Soviet Union viewed with disfavour any international institution which was based on the tripartite principle and of which one of her enemies—Finland—was still a member. At that time, Soviet objections still weighed heavily with Western statesmen. In December, 1943, the Governing Body of the International Labour Organisation invited the Soviet Union to rejoin the Organisation and to take her seat on the Governing Body. This overture did not, however, meet with any response. Those responsible for the policy of the International Labour Organisation were fully aware of the fact that if anything could save it this could only be an impressive demonstration of unabated vitality.

At its 1944 Session in Philadelphia, the General Conference of the International Labour Organisation solemnly adopted a Declaration concerning the Aims and Purposes of the International Labour Organisation, commonly known as the Philadelphia Charter.³ Into it were skilfully woven all the economic long range objectives which, at various stages, the United Nations had set themselves. In this way, the world was reminded impressively of the fact that if, at last, it had awakened to the truth of the fact that peace must be based on social justice, the International Labour Organisation had striven towards this end throughout the inter-war period.

In the Dumbarton Oaks Proposals, it was envisaged that responsibility for the whole of economic and social co-operation should be vested in the General Assembly and, under its supervision, in an Economic and Social Council. The underlying idea was that 'while in the field of security the main responsibility rests with the States possessing the greatest military potential, in the social and economic field power—in terms of experience, sagacity and very often financial strength—is much more widely distributed, and it is therefore appropriate that responsibility should rest with the body representing a wider circle of States' (*British Commentary on the Dumbarton Oaks Proposals*, Cmd. 6571—1944).

As compared with the composition of the governments of the Allied and Associated Powers during the First World War, their

³ See above, p. 323.

successors in the Second World War stood further to the political Left and relied to a greater extent on support from organised Labour and the Trade Unions. Governments were also uncomfortably aware of the fact that the wartime generation of the Second World War was somewhat conscious of the unfulfilled promises which had been made to their fathers. They were obsessed by the fear that the return to peace would merely mean a repetition of the depressions and mass unemployment of the previous inter-war period. The draftsmen of the Dumbarton Oaks Proposals, therefore, thought it wise to improve upon the work of the Peace Conference of 1919 and to widen considerably the future range of international economic and social co-operation.

At San Francisco, still greater emphasis was laid on functional international co-operation. In the Preamble of the Charter, the United Nations expressed their determination to 'promote social progress and better standards of life in larger freedom' and to 'employ international machinery for the promotion of the economic and social advancement of all peoples'. This third object of the United Nations was declared to be the achievement of international co-operation in solving 'international problems of an economic, social, cultural, or humanitarian character' (Article 1 (3)). The United Nations was to promote these objects and, more specifically, 'higher standards of living, full employment, and conditions of economic and social progress and development' (Article 55).

The General Assembly was charged with the tasks of initiating studies and of making recommendations in all the fields of international economic and social co-operation (Article 13 (1) (b)). As in the Dumbarton Oaks Proposals, the General Assembly was to be responsible for the discharge of these functions. The Economic and Social Council was to work 'under the authority of the General Assembly' (Article 60). In order to emphasise, however, the importance of international economic and social co-operation under the United Nations, the Economic and Social Council was elevated to rank as one of the 'principal organs' of the United Nations side by side with the General Assembly (Article 7). This status of equality by courtesy does not, however, affect the reality of the constitutional subordination of the Economic and Social Council to the General Assembly.

The Economic and Social Council consists of eighteen members elected by the General Assembly (Article 61) and voting takes place by simple majority (Article 67). The Council may enter into consultation with non-governmental organisations which are concerned with matters within its competence (Article 71).

The self-denying ordinances which the greater powers imposed on themselves by making their election to membership of the Economic and Social Council dependent on the will of the General Assembly and by submitting themselves to a simple majority vote are alone sufficient to counsel caution regarding any too optimistic view of the actual powers of the Council. Closer examination does little to dispel these doubts.

The subordination of the Economic and Social Council to the General Assembly means that, unless more far-reaching competences are entrusted to the Council by the Charter itself, the Council cannot have wider powers than the organ under whose authority it operates. Yet, by and large, the General Assembly has no power of decision and is limited to the function of an advisory organ.

Chapter X of the Charter, which is dedicated to the Economic and Social Council, confirms this interpretation. The Council may make or initiate studies and reports, prepare draft conventions and call conferences on matters falling within its competence. It may also enter into agreements with specialised agencies, defined in Article 57 as international institutions 'established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields'. These agreements define the relation between the United Nations and each of these agencies. The essential function of the Economic and Social Council in this field is one of co-ordination of the activities of these specialised agencies. The Council lacks any real executive authority.

By Article 56 the members of the United Nations are pledged to 'take joint and separate action in co-operation with the Organisation' for the promotion of the economic and social objectives laid down in Article 55 of the Charter. The United Nations cannot, however, take any action in these fields, but merely submit recommendations or draft conventions to the members for their consideration. Members are not under any legal obligation to take any specific joint or separate action for the promotion of these general objectives. Thus, they remain free to decide for themselves whether they desire to take any particular joint or separate action.

If Article 56 is not completely meaningless—a result of legal interpretation which should be avoided—it is, at the most, a reaffirmation of the general principle of good faith. Perhaps it also implies the duty of members—as is suggested by Professor Goodrich and Dr. Hambro in their *Commentary on the Charter of the United Nations* (1949)—to submit multilateral draft conventions in this field, which are initiated by the United Nations, to their own competent

national organs for consideration and, in case of ratification, to take the necessary measures to carry out such agreements. This latter duty exists under international law irrespective of any such provision.

The real reason for Article 56 of the Charter was to gloss over a far-reaching difference of opinion that had arisen at San Francisco. The Australian Delegation had proposed an additional article which would have given more concrete meaning to the pledge actually given in Article 56. According to this draft, the members of the United Nations were to undertake to report annually to the General Assembly upon the action which they had taken, nationally and internationally, for the implementation of the economic and social objectives of the United Nations and of any recommendations of the Economic and Social Council. The United States Delegation feared, however, that this proposal interfered unduly with economic State sovereignty. The obscure wording of Article 56 was the result of an attempt to achieve merely verbal concord.

Like its parent body, the General Assembly, the Economic and Social Council has as much, and as little, significance as the members of the United Nations care, at any time, to give to its recommendations. To any extent to which they want international economic and social co-operation, the highly elaborate apparatus of the Economic and Social Council with its plethora of nine functional and three regional commissions, served by plenty of sub-commissions, standing committees, ad hoc committees and special bodies, can amply fulfil all requirements of initiative and co-ordination. Conversely, the concrete commitments of the members under the Charter in this field amount to little. The test of the good intentions proclaimed in Chapters IX and X of the Charter of the United Nations lies in the practical results achieved by the Economic and Social Council and in the competences entrusted to the specialised agencies by the members of the United Nations.

THE REALITY OF FUNCTIONAL INTERNATIONAL CO-OPERATION WITHIN THE UNITED NATIONS

In order to assess the work of the Economic and Social Council fairly, its character as an initiating and co-ordinating body must be recalled. The economic surveys of recent developments and trends of world economy; the appraisal of the economic situation and prospects of Europe and of other economic regions; the reports on questions of employment and economic stability, and expert conferences, such as those on the Conservation and Utilisation of Resources (1947), on Statistics (1948) or on Technical Assistance (1950), are

indispensable and invaluable ground work for real international economic and social co-operation. Recommendations submitted to national governments by the various committees and working parties of the Economic Commission for Europe, and corresponding activities of the Economic Commissions for Asia and the Far East and for Latin America, are no less useful. There is, however, the danger of such paper work being mistaken for deeds.

The proceedings of the third session (April-May, 1948), of the Sub-Commission on Employment and Economic Stability of the Economic and Employment Commission of the Economic and Social Council may illustrate the scope of the work that can be usefully done on this level. The Sub-Commission considered the replies of member governments to a questionnaire on employment and drew from these replies three realistic, but disconcerting conclusions. In a serious economic crisis, few members would be able to overcome their domestic difficulties by international co-operation. Furthermore, governments still regarded import restrictions as one of the handiest remedies against large-scale unemployment. Finally, if any country was contemplating restrictions in agricultural production to prevent relative over-supply of such commodities, other countries would be likely to take parallel action in order to prevent a world glut in these primary products.

The Sub-Commission accompanied its warnings by some constructive suggestions: the re-establishment of the multilateral convertibility of currencies; a review of the Charters of the International Monetary Fund and of the Bank for International Reconstruction, and the creation of international buffer stocks in commodities (Doc. E/C.N. I/66—1948).

These recommendations pose the stereotyped dilemma of international co-operation: reliance on voluntary collaboration between governments in case of need, or the endowment of international institutions with sufficiently far-reaching functions to enable them to forestall and, if necessary, to meet adequately such contingencies as they arise. Are the specialised economic and social agencies of the United Nations in a position to fulfil these tasks?

However important they may be in themselves and from a long-range point of view, some of these specialised agencies will have to be ignored at this stage; for their activities do not—or not yet—essentially affect the overall picture. These are the Universal Postal Union (Revised Convention of May 23, 1939—Cmd. 7435—1948); the International Civil Aviation Organisation (December 7, 1944—Cmd. 6614—1945); the United Nations Educational, Scientific and Cultural Organisation (November 16, 1945—Cmd. 6963—1946); the

World Health Organisation (July 22, 1946—Cmd. 7458—1948); the International Refugee Organisation (December 15, 1946—Cmd. 7934—1950); the International Telecommunication Union (October 2, 1947—Cmd. 7458—1948); the World Meteorological Organisation (October 11, 1947—Cmd. 7989—1950); and the Inter-Governmental Maritime Consultative Organisation (March 6, 1948—Cmd. 7412).

They are the type of international institutions which might innocuously exist on the fringes even of pure systems of power politics and economics. Their existence or non-existence—if such a stringent test may be applied—would hardly affect the chief tensions in present-day international society. The International Labour Organisation (Revision Conventions of November 5, 1945—Cmd. 6880, 1946—and of October 9, 1946—Cmd. 7516, 1948), too, may be added to this list. The limitations of this quasi-legislative international institution have been examined in another context.⁴ This leaves us with the Food and Agriculture Organisation of the United Nations, the International Bank for Reconstruction and Development and the International Monetary Fund. Have these international institutions introduced any new element into the picture of functional international co-operation?

Ultimately, it may be true to argue—as is done effectively in the Preamble of the Constitution of UNESCO—that,

‘Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed. . . . A peace based exclusively upon the political and economic arrangements of governments would not be a peace which could secure the unanimous, lasting and sincere support of the peoples of the world, and . . . the peace must therefore be founded, if it is not to fail, upon the intellectual and moral solidarity of mankind.’

Life, however, is a whole. It is possible, therefore, to retort that the intellectual and moral solidarity of mankind, even if attainable, would be subject to severe strain if some parts of the world experienced starvation and famine, while others enjoyed relatively comfortable conditions of living. Such a discrepancy in standards of nutrition and comfort in itself might be an indication of the fact that the world had not yet reached the state of moral solidarity postulated by UNESCO. Otherwise, those nations who live above the minimum of calories required for subsistence would feel a moral urge to share their surplus with the famine areas. It is common knowledge, however, that this gulf exists in our world.

The nutrition standards of America and Western Europe and of the Far East are at opposite ends of the scale. Even if UNESCO

⁴ See above, p. 241.

succeeded in realising this part of its programme, this would only lead to a fairer share of existing supplies. In a world whose population is rapidly increasing and in which soil erosion makes terrifying inroads into arable land, the real issue is not limited to one of fairer distribution of existing foodstuffs, but of increasing considerably existing production. Even in a world from which the fear of war was effectively banished, this problem could not be easily solved.

If those in want cannot pay farmers a price which covers the cost of production and a reasonable profit, agriculture in a capitalist economy soon suffers from over-production, even in a famished world. In a different form, a socialist world would still have to face the same issue. As a rule, planned economies could only afford to give away their surplus agricultural products in exchange for goods of which they themselves were in need. Otherwise, in both cases, such transactions would amount to outright gifts. Moreover, even if capitalist or socialist States were prepared to adopt such altruistic policies, those in most urgent need of their charity would probably not be in a position to supply the ships required for the transport of such products or to pay for the freight. Thus, the cost of alms would be swelled still further.

Once hunger is recognised as one of the main driving forces in world history, functional international co-operation in matters of food supply and distribution assumes a place with a high priority value. It is to the credit of the leaders of the United Nations that, as early as 1943, they should have taken the initiative in attacking this issue and that, by October, 1945, they should have established the Food and Agriculture Organisation of the United Nations (FAO).

The purposes of FAO are to raise levels of nutrition and standards of living of the peoples in the member States; to secure improvements in the efficiency of the production and distribution of all food and agricultural products; and to better the condition of rural populations, and thus to contribute towards an expanding world economy.

The functions of FAO leave little scope for action. As on the higher levels of the Economic and Social Council of the United Nations, the usual formulae repeat themselves: collection, analysis, interpretation and dissemination of information; promotion and recommendation of national and international action; technical assistance to governments that may ask for it and the organisation of missions which may assist governments to 'fulfil the obligations arising from their acceptance of the recommendations' of FAO.

At the end of Article I of the Constitution of FAO is an exciting paragraph. According to Paragraph 3 (c), it is the function of the Organisation 'generally to take all necessary and appropriate action

to implement the purposes of the Organisation as set forth in the Preamble'. Yet, in the subsequent Articles, in which the functions of the Conference, of the Executive Committee (subsequently the Council—and of the Director-General are defined, these organs are not granted any competences which would enable them to take any executive action. The Organisation remains a body of merely advisory and consultative international institutions. Its annual budget of 5 million dollars, too, assures that no forward activities need be expected from this quarter.

At the Copenhagen Conference of FAO of 1946, Lord (then Sir John) Boyd Orr proposed the establishment of an economic agency, the World Food Board. The Conference was full of praise for the beauty of this idea, but referred the proposal to a Committee of Eighteen. Out of its deliberations, a proposal for another advisory organ, a World Food Council, emerged. It was to function between the annual sessions of the FAO Conference. At the Third Session of the FAO Conference in 1947, it was decided to accept this proposal and to substitute the Council for the former Executive Committee. Thus, Lord Boyd Orr's undiplomatic attempt to give vitality to FAO was reduced to sweet reasonableness.

Finally, the membership of the Organisation deserves attention. The Soviet Union never joined FAO. Since the withdrawal of her European satellites from FAO in 1950, the Communist-controlled world remains unrepresented in this specialised agency. Argentina, too, has kept aloof.

Right from the start, the tasks of the International Bank for Reconstruction and Development were defined in rather cautious terms (Articles of Agreement, December 27, 1945 (Cmd. 6885, 1946). The Bank was to facilitate and promote private investment abroad and, if required, to supplement it. Nobody ever intended that the Bank should become a public substitute for private financial enterprise or should compete with it. The Bank was to encourage and safeguard private investors by its guarantees and to assist debtor States in obtaining foreign exchange not otherwise available for carrying out productive projects.

In retrospect, it is easy to see that, at Bretton Woods, the representatives of the forty-four United Nations there assembled indulged in unwarranted optimism. Little did they realise the full extent of the financial exhaustion from which, by the end of the war, all European countries were to suffer. Nor could they fully appreciate the scope of the chaos that the war had created in South-East Asia. Thus, they seriously underestimated the magnitude of the resources and the length of time that would be required for the economic and

financial reconstruction of the post-war world. Needless to say, they did not contemplate the contingency of the split between the Eastern and Western worlds and its economic repercussions.

In the case of any such enterprise as the International Bank its effect on international economic relations is relatively simple to calculate. It is a matter of figures and of their relative significance.

The authorised capital stock of the Bank is 10 milliard dollars. The capital subscribed is 8 milliard dollars, of which only 20 per cent, that is to say, little over $1\frac{1}{2}$ milliard dollars is paid up. Members have paid one-tenth of this amount in gold and dollars and the rest in their own currencies. The former amount is at the Bank's free disposal. Unless members agree, as was first done by the United States, the other nine-tenths can only be spent with the consent of the countries concerned. The maximum scope of the Bank's operations is determined by Section I of Article IV of the Articles of Agreement. It is equivalent to the paid up capital, surplus and reserves. By 1949 figures, this amounts to about 8 milliard and 350 million dollars.

The Bank started its operations in June, 1947, and granted its first loan of 250 million dollars to France. By October, 1950, the Bank had given loans exceeding one milliard dollars. Of the total, 550 million dollars went to West European States (Belgium, Denmark, Luxemburg, France and the Netherlands), $16\frac{1}{2}$ million dollars to Turkey, 35 million dollars to Finland and Yugoslavia, $221\frac{1}{2}$ million dollars to Brazil, Chile, Colombia and Mexico, 100 million dollars to Australia, and $72\frac{1}{2}$ million dollars to India.

In December, 1950, the following more important countries were non-members: Argentina, Bulgaria, Burma, Germany, Hungary, Iceland, Japan, New Zealand, Rumania, Sweden, Switzerland, and the Soviet Union. By this date, Czechoslovakia and Poland had withdrawn from the Bank.

The most that can be said in favour of the Bank is contained in the Bank's *Second Annual Report* (1946-47). In it, the Bank is likened to a 'catalyst by which production may be generally stimulated and private investment encouraged'. The Bank's operations may be fairly compared with the loans made by the United States Export-Import Bank, which, by December, 1950, amounted to 2 milliard 582 million dollars by way of direct loans and an additional 150 million dollars through agent banks—excluding credits under Marshall Aid. The United Kingdom alone received in 1945 from the United States a loan of 3.75 milliard dollars (Financial Agreement, December 6, 1945—Cmd. 6968, 1946). By 1949, the total of post-war financial assistance by the United States to other countries

had reached a total of 25 milliard dollars. In the light of these figures, the subordinate role of the International Bank in the realm of international finance becomes apparent.

The International Monetary Fund was meant to be the monetary counterpart to the International Bank for Reconstruction and Development (Articles of Agreement, December 27, 1945—Cmd. 6885, 1946). While the Bank was to stimulate investment, the Fund was to assure relative exchange stability.

As in the case of the International Bank, the draftsmen of the Articles of Agreement of the International Monetary Fund cherished hopes which the post-1945 period was not altogether to fulfil. They imagined that, after a relatively short transitional period, governments would allow international trade and balances of payment to settle down to a new equilibrium determined by economic competition. Actually, some of the very economic objectives laid down in the Charter of the United Nations, such as the principles of full employment and social security, may force governments to take exactly the opposite course and to plan their balances of payments. Then the automatism assumed in the Fund Agreement may not come into operation at all.

Another symptom of the same liberal doctrine was the further assumption that governments would gradually decrease or liquidate their systems of exchange control. Finally, the founders of the Fund took for granted a relatively quick recovery of world economy. With the re-establishment of an economic world equilibrium, they expected the dollar shortage to disappear.

If these conditions had been fulfilled, the Fund could have done all that was expected of it. According to Article 1 of the Fund Agreement, the purposes of the Fund are the promotion of international monetary co-operation through consultation and collaboration; facilitation of the expansion and balanced growth of international trade; promotion of exchange stability, maintenance of orderly exchange arrangements among members, and avoidance of competitive exchange depreciation; assistance in the establishment of a multilateral system of payments regarding current transactions between members and elimination of foreign exchange restrictions; grants to members of loans for the correction of maladjustments in their balance of payments, and action to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

In the actual conditions of the post-war world, balances of payment remained chronically unstable. The deficits in hard currencies were of proportions that had not been imagined and, in the main,

amounted to a shortage of the currency of one country, the United States. To close this gap required either an intensification of policies of self-sufficiency, a still fiercer competition for world markets than was the case in the inter-war period, this time in a shrinking non-Communist world, or a constructive solution which it was beyond the power of the International Monetary Fund to offer.

When the miracle of enlightened statesmanship happened and, through Marshall Aid, unrequited dollar exports and credits were given out, the Fund, like the Bank, followed in the wake of the United States lead. Both could assist in a subordinate way in the execution of financial and monetary policies which were acceptable to the United States and tended to achieve an expansion of multilateral trade and to discourage further measures of trade discrimination and of currency manipulation.

From the point of view of *l'art pour l'art*, the student of international institutions is entitled to extol the advances made in the constitutions of the specialised agencies under the United Nations in comparison with international institutions of the pre-1914 and inter-war period. If he is a believer in international Fabianism, he may attach significance to the wide acceptance of the majority rule and to the quasi-legislative competences of some of the functional agencies of the post-1945 period. Yet the place occupied by even the most powerful of these—the International Labour Organisation, the Food and Agriculture Organisation of the United Nations, the International Bank for Reconstruction and Development and the International Monetary Fund—must be measured in relation to the giant strength of the two leading world powers.

Such significance as these functional international institutions have is due to the very fact that, by the self-exclusion of the Soviet Union and of her satellites, these institutions are outside the basic contest of present-day world power politics. In the days of Allied wartime unity, the relative universality of these international institutions as envisaged by their constitutive documents was a potentiality. Since then, it has become a remote hypothesis. Now, these agencies belong to one side only of the global chess board. They have been fitted into the wider functional pattern of the economic and social reconstruction of the non-Soviet world. They are merely nominally linked, if at all, with the universal organisation of the United Nations.

In outward appearances, this state of affairs is hardly apparent. This is due to the fact that the Economic and Social Council and the General Assembly proceed by majority vote. So long as sectional pressure groups in the Western world maintain their overall discipline—and there are strong incentives for them not to annoy the

giant of the West unnecessarily—Eastern totalitarianism remains condemned in these organs of the United Nations to merely vocal exercises. It cannot hamstring these activities, as it can in the political field, by the veto.

FUNCTIONAL INTERNATIONAL CO-OPERATION AND THE RIFT BETWEEN EAST AND WEST

On the cessation of hostilities with Japan, the United States terminated somewhat abruptly its Lend-Lease help to its Allies and, in particular, to the Soviet Union. With engaging frankness, President Truman subsequently admitted that the form in which this had been done had been a psychological blunder. In other ways, however, the Soviet Union and the Eastern Communist States continued to receive generous assistance from the West. Through UNRRA, Byelo-Russia and the Ukraine received supplies to the value of nearly 250 million dollars, and Hungary, Poland and Yugoslavia obtained over 900 million dollars in such deliveries. If, in retrospect, Yugoslavia is deleted from this list of beneficiaries, but China and Czechoslovakia are added, the Soviet-controlled sector of the world has, in fact, received more than half of these unrequited Western exports.

Even during this period of unilateral Western helpfulness, the Soviet Union was not exactly forthcoming in functional international co-operation. When the war in Europe had ended, but fighting in the Far East still continued, the chance had come for taking emergency measures at least for the reconstruction of Europe. Preparations for this had begun in earnest early in 1945. It was clear that the United States had to be associated actively with these plans. Without her assistance, the task could not be accomplished. When, however, the Allies met in London in May, 1945 for the discussion of these problems, the Eastern Allies absented themselves. The participants at the Conference were the United States, the United Kingdom, and of Continental States only Belgium, France, Greece, Luxemburg, The Netherlands, Norway and Turkey. It was decided to establish an Emergency Economic Committee for Europe.

The tasks of the Committee were merely advisory and consultative on 'questions of production, supply and distribution which need to be discussed and considered on a common basis'. The Committee was meant to function only during the transitional period immediately following the war. Subsequently, Denmark joined the Committee, and Czechoslovakia and Poland were represented at least by observers. The most useful work was performed in the sub-committees of the Emergency Economic Committee. Unobtrusively, neutral and enemy States were associated with their activities.

Food, coal and transport were the most urgent problems. UNRRA had taken care of the first. Two separate transitional organisations, the European Coal Organisation and the European Central Inland Transport Organisation, were created to deal with these two other bottlenecks of reconstruction. Both these organisations, too, were consultative, but with a difference. At the end of the war, surplus coal could be made available in Europe only from the Ruhr, Poland and by shipment from the United States. A strong incentive existed, therefore, for countries in need of coal imports to join the common pool and to agree to any reasonable scheme for equitable distribution.

In retrospect, the most relevant aspect of these two organisations was the attitude adopted towards them by the Eastern States. Poland joined the European Coal Organisation, but on her own terms. Through the acquisition of the German coal mines in Upper Silesia, Poland had become able to meet her own internal needs, to export coal in substantial quantities to the Soviet Union and still to dispose of an appreciable export surplus of coal. At the same time, coal was then the only Polish export article which amounted to anything. Thus, it was understandable that Poland should make the most of her opportunities.

Poland was allowed to join the Organisation, to carry out her existing bilateral agreements with European countries and she remained free to conclude new bilateral agreements in the future. The obvious remedy, proportionate cuts in the shares in the pool of members who concluded such bilateral agreements, was shunned by the Organisation. The plausible ground was that such a policy would lead to a contraction, instead of an expansion, of inter-European trade. In fact, the Organisation was too weak to live up to the principle of 'equitable distribution', as prescribed by Article 4 of the Agreement of January 4, 1946 (Cmd. 6732).

The only one of these three institutions which was honoured by Soviet membership was the European Central Inland Transport Organisation (September 27, 1945—Cmd. 6919, 1946). All the other Allied Eastern States also became full members. The Soviet Union, France, the United Kingdom and the United States became permanent members of the Executive Board, and Poland occupied one of the three seats allocated to elected members.

The geographical scope of the Organisation was limited to territories in Europe under the authority or control of members, but excluding the Soviet Union and the United Kingdom. Although the Organisation had no real executive functions, it achieved considerable results. It administered a pool of 900,000 wagons; assisted in

the repatriation of 140,000 wagons; carried out the redistribution of enemy rolling-stock and encouraged members in the urgent task of rolling-stock repair.

The advisory work of these three transitional organisations was taken over by the Economic Commission for Europe, established by the Economic and Social Council of the United Nations in March, 1947. In some minor ways, the Commission assisted in promoting greater co-operation between European nations. For instance, it contributed to the conclusion of agreements for the exchange of electric energy between Austria, Czechoslovakia and Poland and between the Allied authorities in Germany and Belgium.

Its surveys and statistics are invaluable, but, in the absence of more accurate information, the post-war figures regarding the Soviet Union are 'mainly based on reported or estimated figures for 1945 and the percentage annual increases as published by the Central Statistical Administration of the Council of Ministers of the Soviet Union' (United Nations, *Economic Survey of Europe in 1949, 1950*). Information supplied or obtainable from the Eastern European Communist States, too, has steadily diminished to a point where the Commission can no longer fulfil even the modest function of providing reliable information on the national economies of these countries.

The limitations of economic co-operation between Eastern and Western Europe become still more evident from a comparison of the trade figures for 1938 and 1949. According to the same survey, exports from Eastern to Western Europe in 1949 amounted to only 40 per cent of the 1938 level, while exports from Western to Eastern Europe were less than two-thirds in volume as compared with 1938. Conversely, trade between the East European States and the Soviet Union was insignificant before the Second World War, but rapidly increased in the post-war period.

The most extreme case is that of Yugoslavia. In the pre-war period, Yugoslavia's trade with other Eastern European countries amounted to less than 20 per cent of her foreign trade. By 1947 it had grown to about 150 per cent but, since the middle of 1948, has sunk once more to the pre-war level.

Again economics proved to be a function of politics. Economists and functionalists may cogently argue that Western and Eastern European economies are complementary. Eastern Europe may be the ideal source of food and raw materials for Western Europe. In the abstract, it could solve the problem of the dollar gap for the nations of Western Europe and provide an excellent market for Western industrial exports. Nevertheless, imports into the United

Western Germany—to name the two countries whose eastern Europe shrank most—amounted only to 150 million dollars in 1949 as compared with 700 million dollars (including the whole of Germany) in 1938.

Economic Survey of Europe in 1949, from which these two interesting points are made. In common with underdeveloped countries, the Eastern European States regard lack of primary goods as a sign of economic inferiority and alone, would press for the development of heavy industry in their own countries. Furthermore, unless these States are assured of long-term contracts for their surplus agricultural products, they cannot be expected to develop this side of their economy and their own requirements.

However, merely contributory factors of a rift which is deepened by the political division of the world. In the United Nations is faced with a frankness that is as commendable as the United Nations publications: 'In the final analysis, the stalemate in east-west trade . . . is clearly the result of the division between the east and the west. As long as mutual distrust prevails, there can be little hope that the free flow of trade between the naturally complementary eastern and western Europe can be realised'.

FUNCTIONAL INTERNATIONAL CO-OPERATION IN A DIVIDED WORLD

The main historic merit of the United States and of her Secretary of State to have broken by his action of June 5, 1947 the vicious circle of post-war tiredness and ineffectiveness of European statesmanship. The United States proved that Lend-Lease help, assistance through American loans to individual States, such as France and the United Kingdom, were only a token of her acceptance of the United States as the world's leading nation.

The United States shall make matters easy for his European counterparts. One of the main matters of the matter is that Europe's requirements for the next few years of foreign food and other essential products—such as from America—are so much greater than her present capacity to produce that she must have substantial additional help or face economic and political deterioration of a very grave character.' The Secretary of State emphasised two further essential points. His policy was not directed against any particular country and the offer was open to any country 'willing to assist in

the task of recovery'. Moreover, the nations of Europe had to come first to some agreement among themselves on their requirements and on the part they themselves were to play in such a programme: 'It would be neither fitting nor efficacious for this Government to undertake to draw up unilaterally a programme designed to place Europe on its feet economically. This is the business of the Europeans. The initiative, I think, must come from Europe.'

France and the United Kingdom responded without delay and invited the Soviet Union to a preliminary conference. It was held in Paris from June 27 to July 3, 1947. The result was the final parting of the ways of East and West in economic post-war reconstruction. M. Molotov thought that 'the planning which is the basis of the socialist economy of the Soviet Union excludes the danger of the crises and economic troubles which are the theme of the American Minister's speech'. He dug himself in behind the principle of unimpaired economic national sovereignty, but was prepared to consent to a Conference of European nations 'with a view to drawing up a list of these countries' requests for American aid' (Statement of June 28, 1947—*French Yellow Book on the Paris Conference*, 1947).

M. Bidault and Mr. Bevin realised that speed was decisive, and that M. Molotov's proposals merely meant the concoction of a shopping list for another visit to the American gift-shop. They announced, therefore, in a joint *Communiqué* of July 3, 1947, their willingness to accept the American proposal and invited twenty-two European States—with the exception of Germany and Spain—to take part in 'drawing up a programme of European reconstruction, in which the resources and needs of each country will be co-ordinated, in accordance with what each one of the European countries shall freely decide'. An outline of the contemplated organisation was attached to the invitation.

The Soviet Union was not expressly invited to the Conference, but informed of it in a French Note of July 4, 1947. In this Note, M. Bidault expressed the hope that the refusal of the Soviet Union to take part in this work of mutual aid was not final. The Eastern States refused to attend. Czechoslovakia had provisionally accepted the invitation, but was forced by the Kremlin to draw back. The most dignified note of refusal came from Finland: 'Desiring to keep aloof from the conflict between the world powers, Finland does not consider it possible to participate in the Conference of Paris, but she sincerely desires to co-operate with the other nations on a purely economic plane, and is in need of foreign aid for her own reconstruction.'

On July 12, 1947, delegates from sixteen European nations met

in Paris. They decided to establish a Committee of European Economic Co-operation. It was to consist of the members of the Conference and other European States who were willing to co-operate, and to work out a report on the resources and needs of Europe during the next four years for submission to the United States before September 1, 1947. In addition, an Executive Committee, composed of delegates of France, Italy, The Netherlands, Norway and the United Kingdom, was created with the task of assisting the Committee in its work.

In the Report of the Committee of September 22, 1947, each of the sixteen governments undertook to make every effort to develop its national production in order to attain the objects of the Report, and all of them mutually engaged themselves to co-operate for the achievement of this task.

At the second session of the Conference, called by a misnomer the Second Session of the Committee, the Convention for European Economic Co-operation was signed (April 16, 1948—Cmd. 7338, 1948). It contains the general obligations of the signatories and the Constitution of the Organisation for European Economic Co-operation (OEEC). At the same Session, the Conference decided to admit the Anglo-American and French Zones of Germany as independent members. Until the formation of the Western German Republic, the two zones were represented by their occupation authorities.

The original members of the Organisation are Austria, Belgium, Denmark, France, Greece, Iceland, Ireland, Italy, Luxemburg, Norway, The Netherlands, Portugal, Sweden, Switzerland, Turkey, the United Kingdom and the Anglo-American and French Zones of Germany.

With the assent of the Council, any other 'European country' may be admitted to membership. In view of Turkey's geographical position and of the original intention of the initiating powers to encourage the membership of the Soviet Union, it appears that the term 'European' allows for an elastic interpretation. In 1950, the United States and Canada expressed the desire to be more directly associated with the work of OEEC. The Executive Committee of OEEC granted to both powers an informal status in the Organisation which amounts to a kind of honorary membership. In matters of an exclusively European character the representatives of both States limit themselves to being mere observers, while in matters affecting the Atlantic community their rôle tends to become that of *de facto* members of OEEC.

Similarly, the word 'country' must not be too narrowly construed. To judge by the admission of the Anglo-American zone of Trieste in

1948, any territory on whose behalf somebody can undertake the necessary international engagements, and which has a sufficiently intimate economic connection with Europe, is primarily eligible for membership.

Members may withdraw from the Organisation on one year's notice. The Constitution is studiously vague on the subjects of suspension and exclusion of members. Article 26 merely provides that if any member ceases to fulfil its obligations under the Convention, it shall be invited to conform with its provisions. Should the member fail to comply within the period indicated in the invitation, the other members may decide to 'continue their co-operation within the Organisation without that member'.

Another point on which the Convention is silent, is the dissolution of the Organisation. In the Report submitted by the Conference to the United States on September 22, 1947, the Organisation is described as temporary and limited to the period of United States help. In the Constitution, however, the elaboration and execution of a joint recovery programme is considered to be only 'an immediate task of the Organisation' (Articles 1 and 11). The chief aim of the Organisation is to be the 'achievement of a sound European economy through the economic co-operation of its members'. This is certainly a function of a permanent character. Similarly, the general undertaking of the signatories to 'work in close co-operation in their economic relations with one another' suggests a more permanent association. At the July, 1950, Session of the Council of OEEC it was recommended to initiate a long-term programme of economic co-ordination. This implied the extension of the Organisation's life-span at least until 1955. When, in December, 1950, Marshall Aid to the United Kingdom was suspended, the Government of the United Kingdom announced its willingness to continue membership of OEEC and of the European Payments Union.

The Council, in which all members are represented, is the organ from which 'all decisions derive'. It is assisted by the Executive Committee and the Secretary-General. The Executive Committee consists of seven members designated annually by the Council and carries on its work in accordance with the general and specific instructions of the Council. Technical committees and other bodies may be established by the Council and are responsible to the Council. In principle, the unanimity rule applies. If, however, a member declares itself not to be interested in a subject under discussion, abstention by such a member does not invalidate the decision which remains binding for the other members (Article 14).

Part One of the Convention imposes far-reaching obligations on

each of the members of the Organisation. It is a legal abstract of the undertakings which are contained in the Report of the Committee of European Economic Co-operation of September 22, 1947. These undertakings represent a comprehensive programme for intensive economic and financial co-operation and co-ordination of national efforts. The members of the Organisation are committed to :

- (1) the vigorous promotion of the development of their national production in the best interest of the accomplishment of the joint recovery programme (Article 2);
- (2) the preparation and fulfilment to the best of their ability of general programmes for the production and exchange of commodities and services (Article 3);
- (3) the maximum possible expansion of trade between themselves by the avoidance and correction of any excessive disequilibrium in their economic and financial relations with each other and non-participating States, by the relaxation of restrictions on trade and payments between one another, by achieving or maintaining confidence in their monetary systems (Article 7), by the establishment of a multilateral system of payments among themselves (Article 4), and by other methods, such as customs unions and free trade areas (Article 5);
- (4) co-operation with one another and other like-minded States in the reduction of barriers to the expansion of trade, ' with a view to achieving a sound and balanced multilateral trading system such as will accord with the principles of the Havana Charter ' (Article 6);
- (5) the fullest and most effective use of their man-power and the facilitation of the free movement of persons between their countries (Article 8);
- (6) the supply to the Organisation of all information that it may request of them to facilitate the accomplishment of its tasks (Article 9).

Unlike the traditional standards of international economic law, the standards laid down in the Convention are not primarily standards of treatment to be granted to other parties, but standards of positive action and good will in the achievement of a common task. They relate to intensity and co-ordination of effort rather than to compliance with any rigid rules. Thus, discrepancies and contradictions between some of these obligations are unavoidable. They can be adjusted only by constant consultation in the light of changing circumstances and requirements. If such priorities are established with an eye on

the overriding aim of the Organisation, all these objectives can be harmonised with each other.

OEEC is entirely independent of the United Nations. With the inclusion of Western Germany, which, from the start was represented in the Organisation by the Allied occupation authorities, six of its seventeen original members are not members of the United Nations. In the Constitution of the Organisation, provision is made for the establishment of such formal or informal relations with the United Nations 'as may best facilitate collaboration in the achievement of their respective aims'.

The Report of the Committee of European Economic Co-operation of September 22, 1947, and the creation of OEEC in Spring, 1948, fulfilled the two conditions on which General Marshall had made American help dependent. While the European nations were engaged in meeting United States requirements, American legislation was passed to enable President Truman to give the necessary assistance. On April 3, 1948, Congress approved the Economic Co-operation Act. It required the conclusion of individual Economic Co-operation Agreements between the United States and each of the recipients of Marshall Aid (Agreement between the United States and the United Kingdom, June 26, 1948—Cmd. 7446). With the exception of Switzerland, which does not receive any assistance, all the members of the Organisation for European Economic Co-operation have complied with this condition. The Economic Co-operation Act, the European Economic Co-operation Convention and the Economic Co-operation Agreements are the three piers of this courageous experiment in post-war reconstruction on a community basis.

Like the Lend-Lease Agreements, the Economic Co-operation Agreements are rare instances in international relations of moderation and generosity on the part of the donor. The obligations imposed on the European States are duties which, in substance, they owe to themselves and each other in the interest of their recovery. Even the local currency counterpart funds—commensurate amounts in national currencies to dollar aid received and set aside in special accounts—are to be used primarily for constructive purposes in the interest of the donees or, since 1950, for purposes of joint rearmament. That a fair proportion should be used for the development of additional production of materials of which the United States is deficient or in short supply, and that the European countries should facilitate the transfer to the United States of such materials for stockpiling or other purposes, are hardly undertakings of a reciprocal character.

They are gestures acknowledging the reality of a community that transcends the economic and financial field.

The recipients of Marshall Aid must obtain the consent of the United States to the use of the local currency counterpart funds, and this gives the United States a considerable say in the governmental investment policies of these States. Yet, in substance, any amount spent from these funds is United States money. There is only this difference; these grants are not encumbered with the normal duties of an international loan, that is to say, repayment of capital with interest. This is true of four-fifths of the first allocation of American aid, which amounted to 5 milliard 300 million dollars. In the case of the loans under the Recovery Programme, which make up the remaining fifth, payment of interest—2½ per cent—and repayment of capital may be postponed by agreement between the parties concerned.

Marshall Aid is meant to be an interim measure. It enabled the participating States to reach their production targets under the Recovery Plan by means of dollar imports. According to the statement made by Mr. Hoffman, former United States Economic Co-operation Administrator, at a joint session of the Senate Foreign Relations Committee and the House Foreign Affairs Committee (February 14, 1950), industrial production in Western Europe was then 20 per cent above the pre-war level. In the two years of the Recovery Programme in operation, hard coal production expanded by 17 per cent, steel by 52 per cent, electric power by 21 per cent, cement by 58 per cent and cotton yarn by 31 per cent.

With the acceleration of the rearmament race, the question is no longer whether, during or after Marshall Aid, these production figures can be maintained. They will have to be maintained and improved in order to implement the rearmament programmes of the Western world. The real issue is whether the United States is prepared to finance the rearmament of the European States to the extent which is required to prevent a serious deterioration in existing standards of living.

If the question of the economic future of the recipients of Marshall Aid could still be approached in terms of peacetime economics, the answer would depend on the prospects for increased exports from Europe to the United States or third countries with considerable dollar earnings, such as Canada, the Latin-American States and the Philippines. Most of these countries have, however, a passive trade balance with the United States. European exports to these countries could, therefore, only be increased by a corresponding reduction of United States exports. The big assumption made would be that the

United States was willing to accept such an increase of European exports into her own country and into foreign markets in which, at present, she is dominant. Even then, it is hard to see how this object could be achieved without a considerable lowering of the cost of European goods. Another possibility would be the reduction of imports from the United States. This would involve the creation of new areas of autarchy and imply either a substitution of imports from other sources for dollar imports—difficult to imagine in the era of the East-West rift—or foregoing such imports as the European States cannot afford. On any assumption—peacetime, cold or hot war economies—a sharp drop in the standards of living of the Marshall Aid countries appears unavoidable.

Until preoccupation with economic reconstruction became overshadowed by the overriding demands of defence, attention was concentrated on devices for avoiding any lowering of the standard of living. Regional unions within Europe, tendencies to the economic integration of Europe and moves towards a reduction of inter-trade barriers and for closer monetary co-operation through inter-European payment agreements and the establishment of a European Payments Union in 1950 all have one common purpose. They aim at the rationalisation of production and at the elimination of economic waste without lowering wages and the standards of living of the masses.

Some of these efforts, however, are little more than make-believe. Benelux shows in a nutshell the difficulties of a customs union even between complementary national economies and the fears of these countries of the consequences of a full-dress economic and monetary union. Belgian agriculture is as afraid of that of The Netherlands as is Dutch industry of that of Belgium. Belgian finance and trade are as loath to give up their position of a hard currency country as their Dutch opposites are disinclined to sever their connection with the sterling area. Both Belgian and Dutch ports look forward with undisguised anxiety to the consummation of economic union between their countries. As for Luxemburg, the fears harboured by its agriculturists and horticulturists of Netherlands competition are pathetic.

The Franco-Italian Customs Treaty of March 26, 1949 has remained an empty gesture. French and Italian economies are parallel, and not complementary, and neither side has the slightest intention of proceeding with the implementation of the Treaty. As for the Council of Europe—whatever its other beneficial functions may be—in the economic and financial field it hardly exists.⁵ The one definite result of the European Payments Union will be the

⁵ See below, p. 785 *et seq.*

commitment of those of its members who had not already done so to free 60 per cent of their imports on private account from quantitative trade restrictions. Individual transactions will still, however, remain subject to national exchange restrictions, and government purchases are unaffected.

Some progress has been made in the liberalisation of international trade and the encouragement of multilateral trade by the Geneva General Agreement on Tariffs and Trade (GATT—October 30, 1947—Cmd. 7258, 1947). For the time being, the exceptions and reservations of the Geneva Agreement are at least as important as its principles. One of the consequences of the general acceptance of the most-favoured-nation standard in this collective Agreement is to prevent the grant of preferential treatment to third powers by any of the twenty-three signatories and of the eleven acceding States, that is to say, chiefly to States in the Soviet-controlled part of the world.

The chief significance of the Geneva Agreement lies in the fact that it puts a stop to any unilateral increase in, and the grant of, new preferences; that it enables each participant to negotiate simultaneously with all others for bilateral concessions, and that it extends the benefits of the tariff rates under the agreed schedules to the other contracting parties. Ultimately, the Geneva Agreement was to be replaced by the still more comprehensive Charter of the International Trade Organisation (ITO—Cmd. 7375, 1948). Before the House Foreign Affairs Committee (April 19, 1950), Mr. Dean Acheson described the 'central philosophy' of ITO as 'multilateralism, free competition and private enterprise'.

As a matter of fact, ITO failed to pass the gauntlet of Congress. Acceptance of the International Trade Charter by the United States would have given to the Administration greater powers in the field of international economic relations than Congress was prepared to grant. Thus, GATT is likely to become a permanent organisation, and the generally acceptable portions of the International Trade Charter will then have to be incorporated into a revised Geneva Agreement. Even so, members will, for some time to come, have to rely on the escape clauses of GATT; for 'if adjustments in international trade proceed along the lines which appear probable on the basis of present trends and policies, they will almost inevitably involve an intensification of direct controls over trade and payments' (United Nations, *Economic Survey of Europe in 1949*, 1950).

In such an eventuality, there would still be differences in degree between autarchy as practised in the West and East. Such systems would, however, be more in the image of the Council of Mutual

Economic Aid (Comecon) than of GATT. Comecon deserves to be studied as a pattern of planning for autarchy.

Little is known about the activities of Comecon. It was founded in January, 1949 as an alternative to the Marshall Plan. The Soviet Union joined with Bulgaria, Czechoslovakia, Hungary, Poland and Rumania in setting up this Organisation. According to the *Communiqué* published in Moscow on January 25, 1949, Comecon 'is open to other European countries which accept the fundamental principles of the Council and desire to participate in a wide economic co-operation with the undermentioned countries'. Subsequently, Albania and Eastern Germany were admitted to membership. Finland remains outside, but it is linked with four of the members of Comecon by a multilateral barter agreement. Owing to Yugoslavia's excommunication from Cominform, she is no longer eligible for membership.

If Comecon has any written Constitution, it has been withheld from the public. Its main purpose is to assist in the increase of production in its member States. This is done by the pooling of experience, the grant of technical assistance, the exchange of raw materials, food, machinery and other equipment and the overall co-ordination of the national economic plans of the Comecon countries. To judge by the subordination of the political and military interest of the European satellites to those of the Soviet Union, more likely than not, the same hegemonial relation exists in Comecon, too. This impression is strengthened by the arbitrary revaluation of the rouble and by the series of bilateral agreements between the Soviet Union and her neighbours for the creation of joint trading companies in which, *de facto* or *de jure*, the Soviet Union is the senior partner. It may be taken for granted that both in Comecon and these joint companies, the rituals of Communist discipline are observed and that, in form, the decisions of Comecon are taken 'with the consent of the interested countries' (Moscow *Communiqué* of January 25, 1949).

The Communist-controlled part of the world can be persuaded to return to multilateral trade, if at all, only by the example of the Western world. Indefinite reliance on American charity, cut-throat competition and the segmentation of the non-Communist world into antagonistic *blocs* would merely confirm Communist countries in the inevitability of their own course and in the hope of ultimately entering the heritage of a decaying capitalist system.

The constructive alternative lies in realising the enormous potentialities of the world outside the Communist orbit. In this way

alone the export problems of Europe and of the United States can be solved in a manner which will not only permit the maintenance of customary standards of living in the industrialised economies of the West, but also allow the levels in the hinterlands of the West to be raised considerably above their present starvation level, and a self-supporting multilateral trading system to be re-established.

In a statement by Mr. Thorp, United States Secretary for Economic Affairs, to the Economic and Social Council (February 25, 1949), chapter and verse for this argument is provided with reference to the data of the late twenties :

'In the years 1926-29, two-thirds of the world's population enjoyed an annual average supply of finished factory goods of less than \$7 *per capita*, while one-third of the world's population enjoyed an annual average of \$104 *per capita*. If, during this same period, the less fortunate two-thirds of the world's population were to have enjoyed a supply of manufactures equal to one-half of the value of that enjoyed by the more fortunate third, or \$52 *per capita* per year, without increasing their own production their imports of manufactured goods would have had to be increased 16 times. This would have been equal to twice the annual value of all the goods entering into world trade.'

The question is how to bring about such an increase in world trade. The first problem is to provide the under-developed countries with the necessary capital. Foreign investments can help, but these countries must themselves make the main contribution to the task of their own development by an increase in their own productivity and in those products of which other countries are in need.

It is in hitting on both these essential constructive issues and in showing a way to their solution that the significance of President Truman's Point Four Programme lies. The first three points of the President's Inaugural Address to Congress (January 20, 1949) were a reiteration of accepted United States principles of foreign policy. The Fourth Point, too, had been covered before by the provision of United States technical assistance to Latin America and Europe. The Third Assembly of the United Nations had already accepted resolutions to this effect.

Yet from the mouth of the President of the United States what is obvious sounds like a gospel of salvation :

'We must embark on a bold new programme for making the benefits of our scientific advances and industrial progress available for the improvement and growth of under-developed areas. More than half the people of the world are living in conditions approaching misery. Their food is inadequate. They are victims of disease. Their economic life is primitive and stagnant. Their poverty is a

handicap and a threat to them and to more prosperous areas. . . . I believe that we should make available to peace-loving peoples the benefits of our store of technical knowledge, in order to help them realise their aspirations for a better life. And, in co-operation with other nations, we should foster capital investment in areas needing development. Our aim should be to help the free peoples of the world, through their own efforts, to produce more food, more clothing, more materials for housing, and more mechanical power to lighten their burdens. . . . This should be a co-operative enterprise in which all nations work together through the United Nations and its specialised agencies. . . . It must be a world-wide effort for the achievement of peace, plenty, and freedom.'

Both Congress and the United Nations appropriated funds to initiate this work. In this context, the otherwise merely hypothetical work of agencies such as the Economic Commission for Asia and the Far East or of the United Nations Economic Survey Mission for the Middle East makes sense, and the specialised agencies of the United Nations may find at last an active outlet for their pent-up energies. On this assumption, the principles embodied in GATT and the International Trade Charter may become a reality in a revived world trading community.

The obstacles to the realisation of the Point Four Programme, however, are formidable. They are not so much inherent difficulties, great as these may be. They lie in the vested interests of the ruling classes of the very countries whose development the Point Four Programme contemplates. They lie in the backwardness and apathy of their downtrodden masses. They lie in the anti-foreign and anti-white nationalism and the fears of colonialism and imperialism nourished by the peoples of Asia and Africa. If anything can overcome these political, psychological and educational handicaps, it is the conviction that the task is vitally necessary and that the alternative to it is the further spread of Communist totalitarianism.

CHAPTER 30

THE UNITED NATIONS: INTERNATIONAL PROTECTION OF HUMAN RIGHTS

' Nothing can be more fallacious than a declaration which gives one with one hand what it authorises the taking from one with the other.' J. Bentham, *The Book of Fallacies* (1824).

INTERNATIONAL law set out on its career in medieval Europe as a law between individuals—but only individuals in a somewhat exclusive category. In the language of the late medieval jurists, they had to be *sui juris*, that is to say, not subject to the overlordship of any other mortal.¹ Whatever the character of the transaction—be it a contract of marriage or an alliance—international law applied to the relations between the sovereign princes in Christendom.

When they acquired the monopoly of conducting foreign affairs, as most of them did, it was taken for granted that they were committing not only themselves, but also their nations. Hand in hand with the transformation of medieval and absolutist rulers into organs of State, heads of State were increasingly regarded as representatives of their States rather than as the principals in international transactions. From the early days onwards, this position was more apparent in the case of rulers of aristocratically organised communities such as the Italian city States. Sovereign in all but name, they dealt on a footing of equality with Christian and Muslim princes in peace and war.

It was implicit in the exclusive character of the relations between those *sui juris* that anyone *alieni juris* had no rights under international law. Thus, as a bearer of rights and duties, the individual as such stood outside the pale of international law. Like territory and chattels, he was a mere object of international law. The sovereign, in whose allegiance such an individual was, had the right—but no duty—to look after the interests of his subjects abroad. Yet, then, the sovereign would make his claim in his own right. He did the same when any chattel of his suffered harm at the hands of a foreign sovereign. Disregarding the speculations of naturalist writers, State practice accepted these basic assumptions in the classic period of

¹ See above, pp. 29 *et seq.* and 84 *et seq.*

international law. In the field of international customary law the situation has not changed. The individual is still an object of international law. Nonetheless, international law has its own devices for granting some measure of protection to the individual.

The need for such protection arose earliest in the case of two classes: foreign envoys and merchants. Their safety abroad was assured by means of safe-conducts and, subsequently, treaties. In the case of diplomatic envoys, the character of ambassadors as personal representatives of their sovereigns eased the assimilation of their status to that of their masters. Foreign merchants could rely for some precarious protection on the economic self-interest of the countries they visited and on the reciprocal interest in decent treatment of their own merchants abroad.

Medieval and absolutist princes had too direct an interest in foreign trade to allow matters to be left in such an inarticulate state. In a multitude of treaties of commerce, standards for the treatment of foreign merchants were elaborated. Only at a relatively late stage were the benefits of these standards extended to all foreign nationals. In countries with radically different civilisations, capitulation treaties ensured exceptional privileges to Western nationals. Since the nineteenth century, some minimum standards of respect for the life, liberty, and property of foreigners have even grown into rules of international customary law.²

Three other trends helped to expand international protection of the individual still further by means of treaties and direct intervention. These were sympathies for religious minorities, humanitarianism, and modern nationalism.

In principle, the fate of religious minorities was settled in the Continental Europe of the sixteenth and seventeenth centuries on the basis of the principle: *cujus regio, ejus religio*. A different rule, however, was adopted for the Free Cities in the Holy Roman Empire. In these, Protestants or Roman Catholics often had only a narrow majority. Emigration of the dissident minority would have led to a complete disruption of city life. It was, therefore, decided in the Treaty of Augsburg of 1555 that, in the Free Cities, the two confessions were to live 'quietly and peacefully' together. In the Peace Treaty of Westphalia of 1648, the *Reichsabschied* of 1555 was confirmed and, thus, became part of the public law of Europe.

The Treaty in favour of the Waldenses between England, the United Provinces of the Netherlands and Savoy of 1690 is another landmark in the international protection of religious minorities. The fact that this treaty fitted rather conveniently into the anti-French

² See above, p. 32 *et seq.*

political constellation which existed at the time does not affect its place in the genealogy of minority treaties. It is a reminder, however, of how the pursuit of high-minded objects can easily become subservient to more terrestrial purposes in a system of power politics. Fear of such *arriere-pensees* in the minds of nineteenth century Russian statesmen induced their colleagues in other capitals of Europe to insist on the strictly collective character of the numerous interventions by the greater powers on behalf of Christian subjects of the Sublime Porte.

Humanitarianism, though suspect even to so fair-minded a foreign observer as Wheaton (*Enquiry into the Validity of the British Claim to a Right of Visitation and Search of American Vessels suspected to be engaged in the African Slave Trade*, 1842), was the guiding principle behind prolonged British efforts to abolish the African slave trade. As a result of the *Assiento* of 1713, the monopoly of the slave trade to the Spanish colonial empire had been transferred from French to British merchants. By 1770, more than half the hundred thousand slaves annually exported from Western Africa were transported in British ships. In the face of formidable vested interests behind the slave trade, British public opinion gradually forced reluctant Parliaments into action. Slavery was abolished in the British colonies, and slave-trading by British subjects was made a felony. From 1824 onwards, it was treated as piracy. Having put their own house in order, successive British Foreign Secretaries were engaged for the better part of the nineteenth century in getting this peculiar type of free enterprise internationally outlawed by means of bilateral and multilateral treaties.

Between the Napoleonic Wars and the First World War, British diplomacy was in the forefront of the movement for granting such international protection to the individual as was feasible in the aristocracy of sovereign States. Frequently, the discretion which every State has regarding the recognition of new States and governments was used to obtain co-operation in the suppression of the slave trade or in securing decent treatment of British subjects abroad. Rupture of diplomatic relations was threatened—and sometimes applied—in order to induce other States to show respect for the rights of British subjects and, occasionally even to improve the lot of the subjects of such States. It was chiefly by concluding treaties of commerce and by taking a firm stand on the minimum standards of international law in favour of foreigners that Great Britain contributed to the international protection of human rights.

In principle, such assistance was granted to British subjects only. Yet, in accordance with the most-favoured-nation standard, the

nationals of numerous other countries automatically benefited from British commercial treaties with foreign powers. On broad humanitarian grounds, too, nineteenth century British statesmanship often stretched the law and intervened with foreign States on behalf of their nationals.

Finally, the growing importance of the nationality principle, and the temporary alliance between nationalism and liberalism, brought about innovations in the traditional rules of international law. To public opinion it seemed preposterous that territories should be bartered away by statesmen in accordance with cold calculations of power interests, as had been the practice until the eighteenth century. It was increasingly felt that any territorial changes should depend on the consent of the population concerned.

Revolutionary France made herself the advocate of this principle and introduced the practice of plebiscites. The so-called annexation plebiscites in Savoy and Nice of 1792 roughly corresponded to the real wishes of the population. In contrast to these 'honest' plebiscites, the plebiscites conducted by France in Belgium and Mainz were cynically stage-managed. Their real character was appropriately summed up in the title of the Decree of December 15, 1792, on which they were based. It had been styled the Compulsory Liberty Decree.

The plebiscites held in the Italian States in 1848 and 1860, too, showed little respect for the views of dissidents and minorities. The franchise was restricted to the upper and middle classes, and the whole of the peasantry was excluded. The plebiscites on which the cession of Savoy and Nice to France depended were a foregone conclusion. According to the local correspondent of *The Times* (April 28 and 30, 1860), 'the vote was the bitterest irony ever made on popular suffrage—the ballot box in the hands of the authorities who issued the proclamation; no control possible; all opposition put down by intimidation'. The reason for this farce was candidly admitted by Cavour in the Sardinian Chamber of Deputies (*The Times*, May 28, 1860): 'All parties in France not being favourable to Italy, it was necessary to satisfy them by ceding Savoy and Nice, as otherwise the Emperor would not have been able to continue to manifest his sympathies with us.' Although, subsequently, the habit of making the cession of territories contingent upon favourable plebiscites grew, it remained entirely optional. Moreover, only the parties to such treaties were entitled to insist on the fulfilment of obligations regarding plebiscites. The populations themselves had no right whatever under international law.

Another form in which the nationality principle was recognised

was the international protection of minorities. A beginning was made in the Final Act of the Congress of Vienna of 1815. The division of Poland was maintained. On Castlereagh's suggestion, however, the acquiescence of the powers of Europe in this act of dissection was coupled with a declaration that the Polish subjects of Austria, Prussia and Russia were to obtain representation and national institutions. The implementation of these promises was left to the discretion of Poland's conquerors. After a short period of flirtation with Polish nationalism and liberalism, Alexander I, in particular, did his best to break the Polish spirit of independence. Neither Austria nor Prussia ever lived up to the promises they had made in Vienna.

Special problems arose in the Balkans. When the Christian provinces of the Ottoman Empire received autonomy or independence, their adolescent nationalism augured ill for minorities in these countries. In the Balkans, as in Eastern Europe, nationality tended to coincide with religion. Thus, in fact, the duties imposed by the Congress of Berlin of 1878 on Bulgaria, Montenegro, Rumania and Serbia in favour of racial and religious minorities served equally to protect national minorities.

Growing attention was paid to the nationality principle and to national minorities but it was hardly intended to advance the status of the individual. It was a tribute paid to the ever-increasing strength of nationalism, and a recognition of the dangers to the maintenance of the status quo that might result from the abuse of power by majorities over minorities. If such minorities were akin to the populations of neighbouring States or of greater powers, then alleged or real grievances were only too likely to lead to international complications and to serve as levers for expansionist policies.

THE LEAGUE OF NATIONS AND HUMAN RIGHTS

In the First World War, the Allied Powers found the principle of national self-determination a potent weapon in the war against the Central Powers. The Austro-Hungarian Monarchy and the Ottoman Empire were multinational States. Germany, too, with Alsace Lorraine and a considerable Polish minority, was vulnerable to attack from within. Thus, the Allied Powers, in their reply to the German peace proposals of 1916, affirmed that 'no peace is possible as long as the reparation of violated rights and liberties, the acknowledgment of the principle of nationalities and of free existence of small States shall not be assured' (December 30, 1916). Until the breakdown of Czarist Russia, however, the Allied Powers could not proclaim too loudly that the war was a fight either for democracy or national self-

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The principle of national self-determination was declared to be applicable in full to Italy and Russia. In the case of the peoples of Austria-Hungary and of the Ottoman Empire it was limited to opportunities for autonomous development. The relations between the Balkan States were to be adjusted on 'historically established lines of allegiance and nationality'. Poland was to receive, if necessary,

more than the full application of the principle of national self-determination would have demanded. In addition to the promise that the independent Polish State was to include all territories inhabited by 'indisputably Polish populations', it was to obtain free and secure access to the sea. In the case of colonial peoples *equal* weight was to be given to the 'interests of the populations concerned' and to the 'equitable claims' of colonial powers.

President Wilson could claim that, by linking the principle of national self-determination with other principles conducive to a true international community, he had succeeded in transforming a disruptive slogan into a constructive principle. The realities of the Peace Conference of 1919, however, fell far short of these aspirations. Before the Peace Conference met, the Austro-Hungarian Empire had disintegrated. The successor States wanted not autonomy but independence. Austria was denied the right of national self-determination, and Hungary was dismembered. In the Danubian area, the peace-makers reproduced the pattern of the division of Europe into victors and vanquished.

On strategic or economic grounds, each of the successor States, which benefited from the Peace Settlement, came to include large and indigestible minorities. Czechoslovakia consisted of 7 million Czechs. Even if the 2 million Slovaks were added, it still had a minority population of 5 million. In order to make the new State as strong a barrier as possible between Germany and the Soviet Union, Poland, with a population of 32 million, was saddled with German, Russian and Ukrainian minorities, and other smaller minorities amounting to one-third of her population. One-quarter of the total population of Rumania (18 million) were minorities. Yugoslavia consisted of 5 million Serbs, 3½ million Croats, 1 million Slovenes, while other smaller minorities comprised 2½ million of her citizens. Italy was granted strategic frontiers at the Brenner and in the Julian region. This meant the absorption of 250,000 Austrians and 750,000 Croats and Slovenes.

Once frontiers in Eastern Europe were determined in accordance with such complex considerations, a host of new problems was created. Admittedly, once the unity of the Danubian area had been destroyed, only relative justice could be done to the smaller nationalities. Their claims had to be squared with strategic and economic considerations. The most they could be offered was fair treatment in the new States, guaranteed by international protection of their status as minorities.

In insisting on this course, the Principal Allied and Associated Powers knew that they were doing more than their duty by these

minorities. They were fully aware of the dangers to international peace that might arise from any unjust treatment of minorities. In his speech at the plenary session of the Peace Conference of May 31, 1919, President Wilson emphasised this argument in favour of the minority treaties: 'Nothing . . . is more likely to disturb the peace of the world than the treatment which might, in certain cases, be meted out to minorities. And, therefore, if the Great Powers are to guarantee the peace of the world in any sense, is it unjust that they should be satisfied that the proper and necessary guarantees have been given?'

Clemenceau, too, thought it necessary to press the newly established States hard to accept these obligations. In a letter to Paderewski of June 24, 1919 (D. H. Miller, *My Diary at the Conference of Paris*, 1925, vol. 13), written four days before the signature of the Polish Minorities Treaty, he dealt firmly with Polish objections to being subject to a minorities treaty. He reminded the Polish Premier of the fact that 'it has long been the established procedure of the public law of Europe that when a State is created, or even when large accessions of territory are made to an established State, the joint and formal recognition by the Great Powers should be accompanied by the requirement that such State should in the form of a binding international convention undertake to comply with certain principles of government'. Clemenceau clinched matters with a brutal but unanswerable argument: 'It is to the endeavours and sacrifices of the Powers in whose name I am addressing you that the Polish nation owes the recovery of its independence.'

The peace-makers of 1919 did not draw the conclusion from the connection between peace and the international protection of minorities that all members of the League of Nations should undertake corresponding obligations. President Wilson and Lord Cecil joined in stonewalling even the modest Japanese proposals that the principle of racial equality should be recognised in the Covenant.³ As a more acceptable alternative, the British Delegation proposed the inclusion of minorities clauses in the territorial settlements.

In the minorities treaties, which each of the newly established Eastern States was made to accept, minorities were defined as groups of persons who, by language, religion or race, differed from the majority populations. By implication this description covered any national minority; for it is hardly possible to think of a national minority which cannot be distinguished from the majority by one of these characteristics.

It was the purpose of these treaties to assure to the minorities full

³ See above, p. 224.

enjoyment in law and in fact of the elementary rights which, according to the above letter of Clemenceau, are 'as a matter of fact secured in every civilised State', full protection of life and liberty; non-discrimination in fact and in law, and civil and political equality with the majority population.

The minorities treaties contained elaborate precautions against their violation. First, the States bound by these obligations had to undertake to vest the rights of their minorities with the character of fundamental laws. From the point of view of international law, this added nothing to the status or validity of these treaties. In countries with written constitutions, however, this provision gave greater weight and status to minority legislation in the hierarchy of municipal law. It put such statutes on the same level as the national constitution itself and provided a safeguard against any hasty infringement by chance majorities in Parliament. Secondly, any modification or revision of the minorities treaties depended on the assent of the majority of the members of the League Council. Thirdly, any member of the Council was entitled to bring any danger of infraction of these treaties or any actual breach to the attention of the Council. It was for the Council to decide on whatever action it thought advisable to take. Finally, any difference of opinion on the interpretation or application of these treaties between any of the States subject to minorities treaties and any member of the League Council could be referred to the Permanent Court of International Justice by the member of the Council involved in such a dispute.

By means of the minorities treaties, the relevant sections of the Peace Treaties of 1919 and unilateral declarations prior to admission to membership of the League of Nations, the States in the belt from the Baltic to the Black Sea, and Iraq, were made to accept these far-reaching limitations of their independence in the interest of the international protection of their minorities.

As in the era of the Concert of Europe, small States had to accept limitations of their independence which were not imposed on greater powers. Even defeated Germany was not asked to undertake obligations such as were imposed on the Eastern States. All the more were the Allied and Associated Powers satisfied when the Italian Prime Minister repeatedly declared during the Peace Conference the Italian resolve to grant to the non-Italian nationalities under Italian rule all the rights of Italy's 'liberal and democratic laws'. Although, in a speech from the Throne on December 1, 1919, the King of Italy had reiterated these promises, Mussolini had no scruples about pursuing a relentless policy of denationalisation in South Tyrol and the former *Italia irredenta*.

In a speech in the Italian Chamber on February 6, 1926, the *Duce* justified his action on the ground that Italy had not undertaken any treaty obligations in favour of her minorities. In so far as the Austrians in South Tyrol were concerned, he distinguished them from national minorities as an 'ethnic relic', the 'last remnant of the barbarian invasion'.

A distinction was even drawn between small States. Belgium and Denmark were considered sufficiently Western and civilised to make the international protection of their newly acquired minorities unnecessary.

The League Assembly was content merely to resolve in 1922—and to reiterate in 1933—that 'the States which are not bound by legal obligations to the League with respect to minorities will nevertheless observe in the treatment of their own racial, religious or linguistic minorities at least as high a standard of justice and toleration as is required by any of the treaties and by the regular action of the Council'.

In other respects, the international protection of minorities showed some improvement in comparison with the pre-1914 period. As with the post-1919 plebiscites, greater emphasis was put on effective international control and on impartiality in the application of these principles. On the most optimistic assumption, these devices only just caught up with the more virulent nationalism of the inter-war period. In the worst case, the minorities created by the Peace Treaties of 1919 would be a festering sore on the European body politic.

Compared with the pre-1914 period, the principle of collective intervention was strengthened by making the League Council the chief supervisory agency. This procedure still left the greater powers with a preponderant say in the matter, but it diminished the danger of the abuse of minorities as pawns in the game of individual greater powers.

The object character of minorities was emphatically preserved. Petitions from members of minorities were subject to a stiff preliminary examination by the League Secretariat in accordance with strict rules of procedure (Resolutions of the League Council of September 5, 1923 and of June 13, 1929). Provided that a *prima facie* case had been established regarding the allegations made in a petition, it was examined by a Committee of Three, consisting of the President of the Council and two other members. If the State concerned was not prepared to redress the wrong, the report of the Committee was communicated to the members of the Council for their information.

Petitions under the League minority procedure were merely an additional 'source of information for members of the Council' (P. de

Azcárate, *League of Nations and National Minorities*, 1945). It was then for each member to decide whether it wished to make such a complaint its own and to raise the matter formally in the Council. As the members of the Council were representatives of their States, however, and not quasi-judicial international civil servants, the decision would not necessarily be influenced exclusively by the intrinsic merits of a particular case.

It depended on similarly complex considerations whether the Council as such would 'take such action and give such direction as it may deem proper and effective in the circumstances', or whether a member would exercise the right to bring any difference of opinion on the application and interpretation of the minorities treaties before the Permanent Court of International Justice (Article 12 of the Polish Minorities Treaty of June 28, 1919).

The attitude of France towards concrete minorities issues differed from that of the United Kingdom. France's Eastern Allies were the States against which most of the complaints were made. French representatives in the Council tended, therefore, to take a rather cautious line on individual cases as distinct from firm adherence to the principles involved in the protection of minorities. The United Kingdom was free from such special ties and, at the same time, anxious to prove her disinterestedness both to the new States and to Germany, the greater power most directly interested in the fate of minorities in Eastern and Central Europe. In view of Italy's own policy of denationalisation of minorities, the Italian representative in the League Council as a rule took a completely passive attitude on minority questions. The Japanese delegate figured usually as *rapporteur*, as his country was least involved in any of these inter-European controversies.

In the 'twenties, the minority system of the League of Nations worked tolerably well. Yet the fate of these collective guarantees was linked inseparably with that of the League itself. When, after 1931, under the onslaught of the attacks delivered with ever-increasing momentum, the League of Nations gradually disintegrated, and when the democratic nations went from retreat to retreat before totalitarianism triumphant, the League minorities system, too, broke down.

The States which were subject to the minorities treaties felt that the unilateral character of these obligations reflected on their status as civilised communities. Although, objectively, such distrust was only too justified, the apparent lack of reciprocity served as a constant irritant.

Even Poland took a completely different attitude towards her unilateral obligations under the Minorities Treaty of June 28, 1919 as compared with her duties under the reciprocal German-Polish Geneva Convention on Upper Silesia of May 15, 1922. By this Convention, Germany had voluntarily undertaken obligations corresponding to those of Poland, and both sides realised that each would benefit from a liberal construction of this Treaty.

The States bound by the minorities treaties of 1919 could not expect any reciprocal favours of this kind from other nations. Thus, when Hitler tempted Poland to seek a direct understanding with the Third *Reich*, Poland promptly fell into the trap. Following the German-Polish Non-Aggression Treaty, Colonel Beck informed the Assembly in a defiant speech (September 13, 1934) that, 'pending the introduction of a general and uniform system for the protection of minorities, my government is compelled to refuse, as from today, all co-operation with the international organisations in the matter of the supervision of the application by Poland of the system of minority protection'.

In the years that followed Hitler used the cards of national self-determination and of 'oppressed' minorities to the full to bring about first the incorporation of Austria into Germany, then the disintegration of Czechoslovakia, the detachment of the Memel Territory from Lithuania, and finally, the fourth partition of Poland.

The case of the German minorities in Czechoslovakia and its handling by the Third *Reich* was a model of community conceptions being abused in the interest of power politics in disguise. Germans in Czechoslovakia had been treated very much better than in Italy or Poland. Compared with the treatment inflicted by the Third *Reich* on its Jewish minority, Germans anywhere fared exceedingly well. The *Sudetenland* had never been part of Germany. Until the incorporation of Austria, not even the Third *Reich* had raised any complaints against alleged ill-treatment of the German minorities in Czechoslovakia. If reasons for such complaints existed, there was ample treaty machinery for remedying such grievances.

At Locarno, Germany and Czechoslovakia had concluded an Arbitration Treaty. The Minorities Treaty between Czechoslovakia and the Allied and Associated Powers of September 10, 1919, provided for the possibility of its revision with the consent of the majority of the members of the League Council. If the Western powers had desired to resist Hitler's demands, they could have found further comfort in the Report of the Commission of Rapporteurs on the Åland Islands of April 16, 1921 (League Council Doc. B.7.21/68/106): 'To concede minorities, either of language or of religion, or to

any fractions of a population, the right of withdrawing from the community to which they belong, because it is their wish or their good pleasure, would be to destroy order and stability within States, and to inaugurate anarchy in international life.' They might have asked Hitler by what right he invoked a principle which he was not prepared to apply in his own country. They might even have made it clear that President Wilson's Fourteen Points could be accepted only as a whole.

Actually, the issue was neither one of protecting an ill-treated minority nor of applying the principle of national self-determination. It is abundantly clear from the Runciman Report (Cmd. 5847—1938) that every concession made by the Czechoslovak Government was merely used by Henlein, and the Third *Reich*, as a stepping stone for further demands. Invocation of the principle of national self-determination was merely a useful form of German propaganda in the Western democracies. This slogan was to allow the appeasers to take cover in the shelter of principle while Hitler merrily dismembered the Bohemian fortress. This was the real object of the Nazi drive against Czechoslovakia.

So long as an independent Czechoslovakia existed, linked by treaties of mutual assistance with France and the Soviet Union, the Third *Reich* could not pursue an 'active' policy against either the East or the West. Czechoslovakia had to be reduced to its 'natural' place of one of the hinterlands of the greater power in the 'heart' of Europe.

A biased Austrian census of 1910 served as the shoddy basis for executing the mutilation of Czechoslovakia. When, at Munich, Chamberlain and Daladier sealed the abandonment of Czechoslovakia, they accepted the exact opposite of the principle of national self-determination: that of national determinism. Protection of minorities had become a cloak for intervention on the flimsiest pretext and a means of covering up age-old designs for conquest and domination in twentieth century verbiage.

When, in September, 1939, the Soviet Union joined the Nazi band-wagon, she, too, justified her participation in the German aggression on Poland by the need to give protection to the 'Russian' minorities in Poland. By a confidential Protocol of September 28, 1939, the German and Soviet Governments agreed on the transfer of nationals and of persons of German, Ukrainian and White Russian descent 'if they desire to migrate' into each other's countries. This Protocol initiated a whole series of mass transfers of populations in Eastern Europe and in the Balkans. Increasingly, 'desire to emigrate' was replaced by sheer compulsion.

Two precedents are usually quoted—or rather misquoted—by the protagonists of the transfer of minorities. They point to the beneficial effects of the exchanges of minorities between Greece and Bulgaria, and between Greece and Turkey, in the inter-war period.

In the first-mentioned exchange, 100,000 Bulgarians and 50,000 Greeks were involved. According to the Peace Treaty of Neuilly of 1919, the exchange was on a voluntary basis. In fact, considerable pressure was exercised on both sides to make the minorities leave their countries. Even so a Bulgarian minority of about 80,000 remained in Greece. Those who left were permitted to take their movable property with them. They were credited in the country of immigration with the proceeds from the sales of immovable property. In the circumstances in which the sales were carried out, the prices obtained were necessarily low, and the amounts actually credited were further diminished by currency depreciation. It took eleven years to complete the exchange. It was supervised by an international commission composed of representatives of the parties directly concerned and of neutral members nominated by the League Council.

The Greco-Turkish exchange was more in the nature of an acknowledgment of a *fait accompli* by the Peace Conference of Lausanne than a reciprocal transaction. The Turks had expelled more than a million Greeks and were not prepared to take them back. Greece insisted on the transfer of the greater part—about 400,000—of her own Muslim population.

The settlement assured to the minorities concerned at least a certain amount of compensation for their loss of property. Again, the transfer was made under the supervision of a League of Nations commission. The Greek inhabitants of Constantinople established there before the Armistice of Mudras (October 30, 1918), were exempted from compulsory transfer. Turkey was willing to make this concession; for the loss of the Greek commercial community in Constantinople would have been an economic catastrophe for her. In exchange, the Muslim inhabitants of Western Thrace were allowed to stay.

Whatever improvement was achieved in these two cases in the relations between the States concerned—and in the relations between Bulgaria and Greece this did not amount to much—was gained at the price of considerable hardship and misery on the part of the individuals concerned. It was a symptom of nationalism growing in intensity, though still tempered with some regard for vanishing liberal scruples and traditions. The fact that, during the Second World War, this exception was more often followed than the

principles of 1919 did not augur well for the international protection of the individual in the years to come.

HUMAN RIGHTS IN THE CHARTER
OF THE UNITED NATIONS

News of the wartime mass transfers and deportations and of the crimes committed by the totalitarian States against their own minorities and the civil populations of the countries under their temporary control shocked Western conscience. The governments of the United Nations, however, fought shy of committing themselves further than the generalities of various United Nations Declarations and promises of stern retribution for war crimes.⁴

The greater powers among the United Nations knew that their Continental allies, especially the Czechoslovak and Polish governments-in-exile, had strong feelings on the subject of minorities and of minorities treaties. These governments could not help remembering that their minorities had been a handy excuse for aggression. More than that, they had formed active fifth columns against their own countries. Thus, both the Czechoslovak and Polish governments-in-exile contemplated large-scale transfers of their minorities to their countries of descent or origin, especially to Germany and Hungary.

In cases where the minority problem could not be solved in so drastic a manner, the United Nations at war had become doubtful of the value of minorities treaties. In an extensive survey of the question in the House of Lords (March 8, 1944) Viscount Cranborne—now Lord Salisbury—expressed a widely-held view when he said that the minorities treaties of the post-1919 period had been ‘perhaps worth while as an experiment; but they certainly were not a success’. As an alternative, he mentioned the suggestion that ‘nations containing minorities should bind themselves to some charter of individual human rights which should apply to minorities as to other sections of the communities concerned’.

Lord Cranborne himself took a sceptical view of this proposal and added an explicit warning: ‘It is in any case not at all easy to formulate a statement of individual human rights, once generalities have been left behind. Moreover, even if this difficulty is surmounted, the Charter of Rights can always be in effect largely nullified by the ill-will of the majority. Whatever is put down on paper, if they do not want to play the game they can always nullify your efforts.’

⁴ See above, p. 308 *et seq.*

To have raised, on the higher inter-American level, the topic of a charter of human rights, whether limited to States with minorities or extending to all of the United Nations, would have meant bringing into the open the structural and ideological differences between the Western Allies and the Soviet Union. It was more opportune to leave matters on the abstract level of the Atlantic Charter and mutually to assure each other that all the United Nations were fighting in unison for their own versions of democracy. Thus, there was little sympathy in the higher ranks of the chief Allies for the movement in favour of the Rights of Man, initiated in the last phase of the Second World War by H. G. Wells and Arnold Lasker and seconded by a number of peace organisations and religious bodies in the United Kingdom and in the United States.

The Dumbarton Oaks Proposals were symptomatic of the real views of the foreign departments. The subject of minorities was tactfully ignored. A half-sentence in Chapter IX was considered ample for the topic of the promotion by the Organisation of the United Nations of 'respect for human rights and fundamental freedoms'.

At the Conference of San Francisco, some of the small States put forward amendments in favour of some recognition of human rights in the Charter of the United Nations. Especially some of the Latin-American republics—Brazil, the Dominican Republic, Mexico and Panama—pressed for modifications in the Dumbarton Oaks Proposals which would bring the Charter into line with the sentiments expressed at the Inter-American Conference of Chapultepec (February 21–March 8, 1945).

They received strong support from General Smuts in his speech at the Sixth Plenary Session of the Conference (May 1, 1945):

'I would suggest that the Charter should contain at its very outset and in its preamble, a declaration of human rights and of the common faith which has sustained the Allied peoples in their bitter and prolonged struggle for the vindication of those rights and that faith. . . . We have fought for justice and decency and for the fundamental freedoms and rights of man, which are basic to all human advancement and progress and peace. Let us, in this new Charter of humanity, give expression to this faith in us. . . . Let us put it into the Charter of the United Nations as our confession of faith and our testimony for the future.'

Meanwhile, the United States Delegation had been subject to continuous and strong pressure from American religious and political organisations to request the inclusion somewhere in the Charter of a Commission on Human Rights. On May 4, 1945, the last day when

amendments to the Dumbarton Oaks Proposals could be submitted, the United States Delegation—until then divided on this issue—decided to move. In a last minute rush, it obtained the consent of the other Sponsoring Powers to some joint amendments to the embryonic Dumbarton Oaks Proposals on human rights.

In the final text of the Charter, references to human rights and fundamental freedoms will be found in a number of places. In the Preamble, faith is reaffirmed in 'fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'. Article 1 declares it to be one of the purposes of the United Nations to achieve international co-operation in 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'. The General Assembly shall initiate studies and make recommendations for the purpose of assisting in the realisation of human rights and fundamental freedoms for all (Article 13 (1) (b)).

In Chapter IX the promotion of these objects is made a duty of the United Nations as such (Article 55) and, as in other fields of international economic and social co-operation, all members are pledged to take joint and separate action in co-operation with the Organisation for the achievement of these purposes (Article 56). Under the authority of the General Assembly, the Economic and Social Council 'may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all', prepare draft conventions and call conferences, in furtherance of these objectives (Article 62). Finally, the encouragement of respect for human rights and fundamental freedoms is declared to be one of the four basic objectives of the trusteeship system (Article 76).

The exact legal meaning of the obligations of member States in the field of human rights emerges only from a synoptic view of all these clauses. The relevant passages of the Preamble and of Article 1 of the Charter make it evident that the promotion of international co-operation and the encouragement of respect for human rights is one of the objects of the United Nations, subordinate only to its main purpose of maintaining world peace.

The fact that Article 2 does not contain any reference to human rights is significant; for in this Article the principles are formulated in accordance with which, in pursuit of the purposes laid down in Article 1, the Organisation and its members 'shall act'. Although there is no sharp dividing line between the Preamble, the Purposes

and Principles of the United Nations,⁶ the location of human rights in the Preamble and Article 1 is not accidental.

At the San Francisco Conference, it was considered advisable to limit the Organisation to the promotion and encouragement of respect for human rights, but to leave the actual protection 'primarily the concern of each State' (Report of Sub-committee I/1/A to Committee I/1).

The Sub-committee added a rider to its Report which underlines the basic principle: 'If, however, such rights and freedoms were grievously outraged so as to create conditions which threaten peace or to obstruct the application of provisions of the Charter, then they cease to be the sole concern of each State.' In the former case, a violation of human rights—like any other action which results in a threat to, or breach of, the peace—establishes a presumption for the competence of the United Nations as the guardian of world peace. In the latter, a curtailment of human rights amounts to obstructing the application of the Charter if such action should involve the breach of any legal duty under the Charter.

The first question, therefore, is whether the members of the United Nations have undertaken any legal obligations for the protection, as distinct from the promotion and encouragement, of respect for human rights. If such protection is 'primarily the concern of each State', it follows that the matter is covered by the last of the Principles, in accordance with which, in pursuance of the Purposes stated in Article 1, both the United Nations and its members shall act. The subject belongs to the category of Paragraph 7 of Article 2 of the Charter⁷; it is a matter which is still essentially within the domestic jurisdiction of any State. With the exception of enforcement measures under Chapter VII, the United Nations is not authorised to intervene in such cases or to require any member to submit them for settlement under the Charter.

During the drafting of this paragraph, an attempt was made by the French Delegation to exempt breaches of human rights from the operation of the principle of domestic jurisdiction, but only if 'the clear violation of essential liberties and of human rights constitutes in itself a threat capable of compromising peace' (UNCIO, vol. 3, p. 386).

Similarly, the Netherlands Delegation put forward in Committee IV/2 proposals—significantly entitled 'Principles for the International Law of the Future'—one of which is directly relevant: 'Each State has a legal duty to see that conditions prevailing within

⁶ See above, p. 452.

⁷ See above, p. 447 *et seq.*

its own territory do not menace international peace and order, and to this end it must treat its own population in a way which will not violate the dictates of humanity and justice or shock the conscience of mankind.'

It might have been thought that, even without express stipulation to this effect, a breach of human rights which constituted a threat to international peace would cease to be a matter of essentially domestic concern. The fact that the French and Netherlands Delegations did not think so, is in itself evidence that they considered any violation of these rights and liberties which did not amount to such a threat to remain a matter of domestic jurisdiction.

It is still more significant that, even in this limited form, these amendments did not recommend themselves to the San Francisco Conference. On the contrary, with express reference to the extension of the functions of the United Nations since Dumbarton Oaks, it was thought advisable to record: 'The necessity to make sure that the United Nations under prevalent world conditions should not go beyond acceptable limits or exceed due limitation called for Principle 8 (Article 2, Paragraph 7) as an instrument to determine the scope of the attributes of the Organisation and to regulate its functioning in matters at issue' (Supplement to the Report of the Committee I/1 to Commission I, June 18, 1945).

In the same report, it is made abundantly clear that this paragraph was not meant to be 'very rigidly construed'. Thus, it would be artificial to give to the term 'intervention' any restricted technical meaning as used in the relations between individual States under international customary law.⁸ *Ex abundantiae cautela*, the Rapporteur stated the meaning of Paragraph 7 of Article 2 in positive terms. Subject to the reservation regarding enforcement measures, the intention of the Contracting Parties was that 'each State has entire liberty of action in matters which are essentially within its domestic jurisdiction'.

Some play has been made with the argument that, since the subject of human rights has been introduced into the Charter, such matters are no longer essentially within the domestic jurisdiction of States. In the first place, this argument proves too much; for it would apply no less to all the other activities referred to in the Preamble and Chapter IX of the Charter, including the promotion of economic and social progress—clearly an absurd conclusion. Secondly, the basic rights and fundamental freedoms for all are nowhere defined in the Charter. The relevant clauses in the Charter of the United Nations are merely in the nature of a programme, and

⁸ See above, p. 447 *et seq.*

the Charter leaves completely unsettled the catalogue and scope of basic rights and fundamental freedoms. Thirdly, to clinch matters, there is the Report of the Rapporteur of Committee II 3 to Commission II of the San Francisco Conference (June 8, 1945). The relevant passage deserves to be quoted: 'There were some misgivings that the statement of purposes (of economic and social co-operation) now recommended implied that the Organisation might interfere in the domestic affairs of member countries. To remove all possible doubt, the Committee agreed to include in its record the following statement: The members of Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX can be construed as giving authority to the Organisation to intervene in the domestic affairs of member States'. Thus, to hold, at this stage, that this subject is no longer essentially within the domestic jurisdiction of States is hardly a proposition that can be seriously entertained.

Actually, it matters little whether the organs of the United Nations which are concerned with the promotion of respect for human rights attempt to intervene in these activities of member States. The draftsmen of the Charter took good care to entrust these functions only to organs without power to act, the General Assembly and the Economic and Social Council. Any more far-reaching powers of the Trusteeship Council under individual agreements regarding trust territories form only an apparent exception to this rule; for it is left with every colonial power or mandatory to decide whether to submit such a territory to the trusteeship system.⁹

Matters are not carried any further by Article 56 of the Charter. This article leaves every member free to decide for itself what to do—whether to take joint or separate action in co-operation with the United Nations, and what kind of action to take.¹⁰

Thus, any failure to protect human rights and fundamental freedoms does not in itself amount to a breach of legal duties under the Charter or to an obstruction of its application. This interpretation of the Charter is supported by the vote of the Chairman and United States member of the International Law Commission in 1949 against the draft Declaration on Rights and Duties of States on the ground that, in Professor Hudson's view, Article 6 of the draft 'went beyond the Charter of the United Nations, and beyond international law at its present stage of development' (A/925—June 24, 1949). The draft Article stipulates that 'every State has the duty to treat all persons under its jurisdiction with respect for human rights and

⁹ See below, p. 660 *et seq.*
¹⁰ See above, p. 589 *et seq.*

fundamental freedoms, without distinction as to race, sex, language, or religion'.

In the Charter, a clear distinction is drawn between the promotion and encouragement of respect for human rights and the actual protection of these rights. The one is entrusted to the United Nations. The other remains in the prerogative of each member State. This is the best that is feasible in a world confederation that aims at comprising all peace-loving States, irrespective of their democratic, authoritarian or totalitarian structure.

HUMAN RIGHTS IN THE PRACTICE OF THE UNITED NATIONS

The aftermath of the Second World War witnessed an appalling amount of human misery. As the result of Nazi mass deportations, millions of people were left stranded in Germany. Their number was swelled by others who fled westwards out of fear of the Russian armies; by those who, in retribution for similar German misdeeds in occupied territories, were expelled in a no less barbarian fashion from East Prussia, Poland and Czechoslovakia, and by those who sought escape from the new totalitarian systems in Eastern Germany, Eastern Europe and the Balkans. The deportation of about 25,000 Greek children by the Communist guerrilla forces to the neighbouring Soviet satellites and the indefinite detention of German and Japanese prisoners of war in the Soviet Union added new features of retrogression to a picture already distressing enough.

In the East, too, India's independence and partition into Pakistan and India set in motion mass persecutions of Muslim and Hindu minorities by the majority populations and a two-way stream of refugees. In the Near East, adolescent Levantine nationalism indulged in steadily increasing discrimination and pogroms against the Jewish population in those countries. When the British Mandate in Palestine ended, the Jewish-Arab war, and the news of the atrocities committed by the combined force of the Irgun and the Stern gang at Deir Yassin, led to the mass exodus of Palestinian Arabs to the neighbouring countries. The Union of South Africa set out on the path to *apartheid*, the frightened response of a white minority to the challenges of democracy in a multi-racial State with an overwhelming black majority.

In the Soviet sector of the world from the Elbe to China, the pattern of people's democracy brought the blessings of suppression of freedom of opinion, secret police, torture, miscarriage of justice, deportation and forced labour camps to millions of hungry

and war-weary people. Hitler may have been defeated in Germany, which still remains to be seen, but the latent Hitler in all of us has celebrated a triumphant resurgence from the Elbe to China as well as in the border regions of the Western world.

As an act of charity, the United Nations stretched out a helping hand to displaced persons and refugees through UNRRA, the International Children's Emergency Fund, the International Refugee Organisation and the Relief and Works Agency in the Near East. When, however, it came to the immigration of these millions into the countries of the members of the United Nations, it was found that most member States were only prepared to accept token numbers.

While practical assistance never got beyond a scale totally incommensurate with the problem, the Human Rights Commission worked at top speed. So far, a Convention on Genocide and a Universal Declaration of Human Rights have passed through the mill of United Nations machinery. The draft Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly on December 9, 1948 and unanimously recommended for adherence to the members of the United Nations. It came into force in October, 1950 between twenty-four States.

The term 'genocide' was first proposed by Dr. Lemkin in the course of the war and incorporated on his suggestion into the Indictment of the Major German War Criminals. The Assembly Resolution on Genocide of December 11, 1946, and the Convention of 1948, are also the result of a remarkable one-man campaign. The shades of the victims of Auschwitz and Belsen haunted the conscience of those who knew better, but who considered it to be statesmanship to submit to the pressure of unrelenting lobbying.

"Genocide is described in the Convention as a 'crime under international law' and includes a number of acts committed 'with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such'. The contracting parties undertake to enact the necessary legislation to provide effective punishment for persons guilty of the offences which are enumerated in the Convention. The Convention applies to any persons committing genocide, 'whether they are constitutionally responsible rulers, public officials or private individuals'. Persons charged with genocide are to be tried by the courts of the State in the territory of which the act was committed or by an international penal tribunal 'as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction'. At the request of any party, disputes between contracting parties on the interpretation, application or

fulfilment of the Convention, including those relating to the responsibility of a State for genocide, are to be submitted to the International Court of Justice.

In order to appreciate the value of this Convention it may be permissible to look at the reality of the situation.

The worst offender in this field in recent years has been Hitlerite Germany. The occupying powers and the other United Nations had plenty of opportunity to bring these criminals to justice. The same applies to any crimes of this character which the Japanese had committed in China and elsewhere.

In the case of the forcible deportations of Germans from Czechoslovakia, Eastern Germany and Poland, there is little doubt regarding the inhumanity with which many of these deportations have been carried out. There would not, however, be sufficient evidence to prove intent to commit genocide on the part of those who were responsible for these deeds. In the case of the mass deportations of Baltic nationals by the Soviet Union the intention of those responsible for these deportations was probably strategic. Finally, Pakistan and India, as well as Israel and the Arab States have accused each other of the commission of this crime.

If the Convention were applied to any of these cases it would be for Czechoslovak, Indian, Iraqi, Israeli, Jordan, Pakistani, Polish and Russian courts to find on the acts committed by their own governments. Hardly any of these alleged crimes have been committed spontaneously by irresponsible individuals. Yet the whole Convention is based on the assumption of virtuous governments and criminal individuals, a reversion of the truth in proportion to the degree of totalitarianism and nationalism practised in any country.

In any event, even if this assumption were correct, the criminal law of every civilised State is already sufficiently wide to cover any individual crime enumerated in the Convention. As it was once put by Sir Hartley Shawcross, murder remains murder whether committed against one or a million. In either case a criminal can be hanged only once.

To clinch matters, the Soviet Union and those of her satellites which ratified the Convention have made an all-important reservation. They have refused to accept the jurisdiction of the International Court of Justice in disputes on the interpretation, application or fulfilment of the Convention.

Thus, the Convention is unnecessary where it can be applied and inapplicable where it may be necessary. It is an insult to the intelligence and dangerous, because it may be argued *a contrario* by brazen upholders of an unlimited *raison d'état* that acts enumerated

in the Convention, but not committed with the intent of destroying groups of a people 'as such' are legal.

Having passed the draft Convention on Genocide, the General Assembly continued the good work on the following day by proclaiming a Universal Declaration of Human Rights with eight States abstaining (Byelorussia, Czechoslovakia, Poland, Saudi-Arabia, South Africa, the Soviet Union, the Ukraine and Yugoslavia). The curious fact deserves to be recorded that the Economic and Social Council had not found time for the examination of the Declaration, but simply transmitted the draft proposed by the Commission on Human Rights to the General Assembly without any recommendation.

The Declaration is in the best tradition of the catalogues of rights that can be found in any modern constitution. It provides for the right of freedom of the individual in isolation (freedom of conscience, religion, opinion and expression; personal freedom, and the right to own property). It assures the right of the individual in a free community (freedom of speech and of peaceful assembly; equality of access to public service and in elections and of democratic representation). Finally, it embodies the ideals of the service State (right to education and to social security).

Mrs. Roosevelt, then Chairman of the Commission on Human Rights, hailed the Declaration as likely to 'become the Magna Carta of all men everywhere' and compared its adoption by the General Assembly to the proclamation of the French Declaration of the Rights of Man on August 26, 1789. Other delegates described the Declaration as an epoch-making event or, in the words of the delegate of Paraguay as a 'flaming force which will lead all mankind towards felicity'.

There was only one other point which was equally firmly asserted by the representatives of the United Nations, and that was that the Declaration did not impose any legal obligations whatever on any member State. In spite of all enthusiasm in the abstract, Mrs. Roosevelt made this aspect of the matter painfully clear: 'In giving our approval to the Declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation.'

Very sensibly, the Indian delegate thought it unnecessary to examine in detail the wording of a Declaration which lacked any legally binding force. Nevertheless, it is salutary to recall a few of the feats of drafting that have gone into the making of this document. Article 4 prohibits slavery and servitude, but turns a blind eye to the

question of forced labour. Article 8 generously grants to everyone the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him in the constitution or by law. Yet, like other 'rights' bestowed by the Declaration, this right is only a moral right of most dubious indefiniteness. Not even corresponding moral duties are imposed on member States to establish such tribunals or to make possible the enjoyment of any of the other rights proclaimed by the Declaration.

Perhaps the greatest mockery is Article 14, in accordance with which everyone has the right to seek and to enjoy in other countries asylum from persecution. Without any corresponding duty on the part of States to grant such asylum such a provision is sheer hypocrisy. Another paragon of meaninglessness is Article 17: '1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property.' The salient issues that matter are those on which the Declaration remains silent: limits of taxation, expropriation, confiscation and interference with private property by means of exchange regulations.

Probably more significant than what the Declaration contains is what it leaves out. Beyond a general prohibition of discrimination in Articles 2 and 7, the Declaration does not provide for any protection of minorities. The General Assembly of 1948 referred this matter for further study to the Economic and Social Council. To judge by the fact that, five years after the Second World War only one minorities treaty has been concluded—the Delhi Pact of April 18, 1950 between India and Pakistan—it is not likely that the United Nations will be able to rekindle enthusiasm for this form of international protection of human rights.

Another matter which was left unsettled was freedom of information. In a resolution of December 14, 1946, the General Assembly had classified this freedom as a fundamental human right, 'the touchstone of all the freedoms to which the United Nations is consecrated'. When this question was thrashed out at the United Nations Conference on Freedom of Information in 1948, it was found impossible to reach agreement between the majority and the Eastern bloc on an article which could be submitted to the Commission on Human Rights for inclusion into the Declaration. Other issues which are ignored in the Declaration are the relations between citizens of member States and the United Nations, a point which is rightly stressed in Professor Holcombe's balanced series of lectures on *Human Rights in the Modern World* (1948).

The reasons why the Universal Declaration of Human Rights is

such an unsatisfactory document are not far to seek. It is an attempt to square the circle. In an international organisation which is based on the principle of heterogeneous universality it is impossible to find a positive common denominator for totalitarian, authoritarian and democratic States and for economies based on liberal, socialist and communist principles.

If all concerned regard the maintenance of such an organisation, and the furtherance of its primary purpose, the maintenance of world peace, as the overriding object, then they must be content to practice toleration. They must be willing to admit that the denial of practically all rights of individual freedom and of democratic rights is of the essence of totalitarian States. If they fail to adopt this line of resignation, but insist on the adoption of universal standards, unanimity or abstention can be attained only at the price of meaninglessness.

It would, however, be premature to ascribe the lack of binding legal commitments in the Declaration only to the unwillingness of the members of the Soviet *bloc* to assent to such limitations of their sovereignty. The Declaration is to be supplemented by a Covenant on Human Rights. In the form in which it was submitted by the Commission on Human Rights to the Economic and Social Council (Report of May 25, 1950), it shows remarkable differences from the Universal Declaration of Human Rights. The reservations made by the Commission in favour of federal States leave the application of the Covenant practically to their discretion. This removes both the Soviet Union and the United States and, by novel reasoning, once again one law is proposed for the super-States and another for the rest of the members of the United Nations.

In the draft Covenant the duties of States which correspond to the rights of the individual are expressly formulated. Forced labour has been prohibited. The absurd right to seek asylum has disappeared. The meaningless property clause of the Declaration has been eliminated. Even the right to democratic representation has vanished. It appears that the moral rights of individuals, when translated into legal obligations of governments, are subject to a mysterious process of shrinkage.

The implementation of the Covenant is to be left to a Human Rights Committee, composed of seven members. They are to be elected for a term of five years by a majority vote of the representatives of the States parties to the Covenant present and voting. If a party to the Covenant considers that another party is not giving effect to any of its provisions, it may bring the matter to the attention of that State. Unless the matter is adjusted within six

State may refer the case to the Committee. If a cannot be reached, the Committee must draw up a fifteen months from receipt of the reference of the mittee. The Report is to be limited to mere fact-not to be burdened with any recommendations for lished breaches of human rights. It is to be published -General of the United Nations.

General Assembly adopted an innocuous convention onal Transmission of News and the Right of Correc-two of the draft conventions prepared by the Geneva 1948 on Freedom of Information. The draft Conven-open for signature until the General Assembly has ork on the decisive draft Convention on Freedom of Again the members of the Soviet *bloc*, joined by ed against the adoption of the Resolution by the ly.

ovenant on Human Rights and the Convention on ormation are valuable efforts in that they assist in te the values which the United Nations have—and nmon. The other side of the picture is that, if any-berations tend to sharpen the ideological rifts in our ld. The one thing which is unlikely to happen is e efforts will substantially alter the lot of those for ese conventions are purported to be made. States itally object to the principles laid down in these drafts come parties to such treaties or sign them with their heek. Those who undertake such obligations in good because, by and large, they already recognise such

e drafts were not full of reservations, exceptions and which leave governments free to do what they like, tion of such conventions presents practically in-ulties. The draft Covenant on Human Rights is implementation at the stage of a report by the Human tee and with the effects of such a report upon public ately, there may be a third separate draft on the of the Covenant. Yet, whether such reports are made ageous denial of human rights in totalitarian States orms of discrimination on grounds of race in some of ntries are only too well known. The restatement of by seven 'persons of high standing and of recognised e field of human rights' would only underline the e United Nations in the face of social forces firmly

entrenched in the less reputable among the member States of the United Nations.

In order to avoid unfair generalisation, it is advisable to check these general conclusions in the light of the practical experience of the organs of the United Nations in the treatment of concrete cases in the sphere of human rights.

In this respect, the activities of the Commission on Human Rights need hardly be mentioned. In a report of February, 1947, the Commission acknowledged that 'it has no power to take any action in regard to any complaints concerning human rights', a policy with which the Economic and Social Council fully concurred. The resolution adopted on this subject by the Economic and Social Council in 1947 makes it clear that petitions alleging any breach of human rights are to receive merely nominal attention by the Secretariat and the Commission. Significantly, the right of petition to municipal or United Nations authorities was included in neither the Universal Declaration of Human Rights nor the draft Covenant on Human Rights. Even in this optional instrument, the right of complaint is limited to States parties to the Covenant.

The only organ of the United Nations which requires attention is the General Assembly. In each of the instances brought before the Assembly, it is well not only to examine what happened—or, to be more correct, what did not happen—but also to ask two relevant hypothetical questions. Would the result in any of these cases have been any different if the Covenant on Human Rights had been in force? If so, is it likely that the countries concerned would have become parties to the Covenant?

In 1946, India complained that, in contravention of agreements between herself and the Union of South Africa, the Union had imposed discriminatory measures on Indians. The General Assembly somewhat summarily dismissed the question whether the matter was one essentially within the domestic jurisdiction of South Africa. It did not even consider it necessary to ask the International Court of Justice for an advisory opinion on the issue. It adopted a resolution in which the opinion was expressed that 'the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two governments and the relevant provisions of the Charter' and requested the two Governments to report at the next Session of the General Assembly the measures adopted to this effect. At the following session of the General Assembly the required two-thirds majority, which India needed even for affirmation of the previous resolution,

In 1948, the General Assembly invited the government of Pakistan and of the Union of South Africa to arrive at a settlement in the light of the Charter and of the Declaration of Human Rights.

At the time the Union of South Africa was one of the countries which abstained from voting in favour of the Declaration, augurs ill to the Covenant on Human Rights. Yet even if the Union had voted to the Covenant, an adverse report of the Human Rights Commission on her *apartheid* policy would not be likely to make her policy of racial discrimination.

It was brought before the General Assembly the case of Soviet wives, including those of foreign diplomats, to whom the Soviet Union refused exit permits. The General Assembly dealt with this issue and adopted resolutions in which the Soviet Union was asked to permit the wives of foreign diplomats to leave the country and in which, in general, such practices were deplored. If the Declaration on Human Rights had been in force, such cases would have been covered by Article 8: 'Everyone shall be free to leave any country, including his own'. What chance is there, for the States belonging to the Soviet *bloc* becoming parties to the Covenant or, if they did, of observing the Covenant?

Since for such scepticism were required, it is furnished by the behaviour of the Soviet Union and her ex-enemy satellites, Hungary and Rumania in the execution of the Peace Treaties of 1947. In these Treaties, Italy and the satellites of the former Axis had to undertake specific obligations to secure under their jurisdiction, 'without distinction as to race, language or religion, the enjoyment of human rights and fundamental freedoms, including freedom of expression, of opinion, of religious worship, of political opinion and of assembly'.

The Peace Treaties provide for the settlement of disputes by interpretation or execution of the Treaty, which are to be effected by direct diplomatic negotiation. Any such dispute is to be referred to the Heads of Mission of the principal Allies specified in the Treaty. If they are not able to settle the dispute within two months, a commission is brought, at the request of either party, before the Commission, composed of one representative of each party and a third member selected by mutual agreement of the two parties from a third country. Should the two parties fail to agree, within one month, upon the appointment of the third member, the Secretary-General of the United Nations may be requested by either party to make the appointment. The Commission

decides by majority, and its decision 'shall be accepted by the parties as definitive and binding'.

In 1949, the Governments of the United Kingdom and of the United States notified the Soviet Union of their disputes with Bulgaria, Hungary and Rumania regarding the interpretation of the human rights clauses of the Peace Treaties of 1947. They invited the Soviet Union to take part in conferences of the Heads of Mission as provided by the Peace Treaties. The Soviet Union, however, failed to see the relevance of the points made by her allies and refused to take part in such conferences. Thus, she brazenly sabotaged the first stage of the proceedings as envisaged in the Peace Treaties.

The General Assembly also concerned itself with this matter. The immediate cause was the series of trials of Church leaders in Bulgaria and Hungary. In the end, at its Fourth Session (October 22, 1949), the General Assembly asked the International Court of Justice for an advisory opinion on the interpretation of the arbitration clauses in the Peace Treaties of 1947, including the situation which had arisen from the refusal of Bulgaria, Hungary and Rumania to appoint representatives to their respective Treaty Commissions. In its Second Advisory Opinion on the *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania* (1950), the Court—with only two dissenting opinions—arrived at a surprising—and hardly convincing—conclusion. It did not consider that the non-appointment of representatives, in itself a breach of the Peace Treaties, justified the Secretary-General of the United Nations in proceeding to the appointment of the third member of any of these Commissions.

It would be hard to find a clearer instance of the futility of pursuing any further with totalitarian States the subject of the international protection of human rights. Even if they are parties to such treaties, they fail to honour their obligations. If they fail to adhere to such instruments, they are committed as little in law as they regard themselves bound in morality. Either way, the result is complete deadlock, a mere waste of energy and further depreciation of the currencies of the United Nations and of international law.

LESSONS UNHEEDED

Bills, charters, declarations and covenants on human rights are not a novelty. The past offers plenty of relevant lessons.

If only on grounds of historical priority, English constitutional experience may claim place of precedence. Magna Carta, the Petition of Right and the Bill of Rights were a reality if, and when, they

were supported by strong social forces which had a vested interest in the protection of the rights which each of these instruments guaranteed. Whether it was the English barons who, with the support of the national hierarchy of the Church and of the boroughs, extorted Magna Carta from King John under the threat of open rebellion, or an alliance between the smaller gentry, the merchant-citizens and the exponents of the Common Law, as in the case of the Petition and Bill of Rights in the seventeenth century, these groups represented a nucleus of strength in the English society of their time.

Unless the King was prepared to accept the challenge of the most powerful sections of his subjects, he had to accept these limitations of royal power. Moreover, these classes were homogeneous not only in their interests, but also in their basic beliefs and ideologies. Although, in the course of centuries, Magna Carta has received a very different interpretation from its original meaning, at any one time most of the rights granted, and the remedies provided, were specific and definite.

These charters were anything but exercises in intentional verbalism. The same was true of the Bills and Declarations of Rights which, in increasing number, were adopted in the seventeenth and eighteenth centuries by the British colonies in North America and, after their secession, by the American States. When, in 1789, the tide of this movement swept back from the American continent to Europe, the liberal and individualistic character of the French Declaration of the Rights of Man corresponded to the long range interests and ideologies of the Third Estate.

The French revolutionaries were not, however, anarchists. They strove to realise their ideals in a strong community of which they were the standard-bearers. Thus, they proudly asserted that the nation was 'essentially the source of all sovereignty' (Article 3) and the law 'an expression of the will of the community'. All agents of the community were accountable to it (Article 15). Finally, 'a public force being necessary to give security to the rights of men and of citizens, that force is instituted for the benefit of the community, and not for the particular benefit of the persons to whom it is entrusted' (Article 12). Yet, when, temporarily, the leaders of the French *bourgeoisie* thought that terror and tyranny were the only means of saving the revolution against their feudal and working class enemies at home and against the intervention of foreign powers, the Declarations of Human Rights of 1789 and 1793 became a mockery.

What is the significance of these constitutional experiments for corresponding international ventures? Whether arbitrary power is wielded by a king or a class, they have not yielded their prerogatives

unless forced by overwhelming pressure or on the point of the threat of rebellion or revolution. Where in present-day international society are any comparable social forces strong enough to tame the modern Leviathans to be found? Even in democracies, the masses clamour for the strong State, and public opinion is somewhat indifferent to the anaemic blueprints proffered by the protagonists of such schemes. Totalitarian and authoritarian States have become monolithic *blocs*, and the attempts to win them over by opportunist concessions do not appear to have been crowned with success even on the level of purely verbal exercises.

Thus, the task of protecting the individual against the sovereign State, and the world powers in particular, has been trustingly left with the representatives of the very powers whose discretionary power is to be curtailed. If the draftsmen of Magna Carta, of the Petition of Right, of the Bill of Rights or of the French Declaration of Human Rights had been equally ingenious, their endeavours would long ago have been covered with well-deserved oblivion.

Further lessons might have been derived from the Weimar Constitution of 1919. The whole of its second part was devoted to the 'fundamental rights and duties of the Germans'. The Constitution of the German Republic was an agglomeration of Western rights of individual freedom, democratic rights of citizens and socialist conceptions. The mainstays of the new State—Labour, Liberals, republican Catholics and, last but not least, the *Reichswehr*—were agreed on the principle of representative democracy as an alternative to working class dictatorship and on the protection of the fundamental freedoms of the individual as a further bulwark against Communism. They were in complete disagreement, however, on the economic, social, educational and religious contents of their State.)

The catalogues of rights and duties in these fields were purely verbal syntheses of incompatibles. Which of them would prevail would depend on the guardians of the Weimar Constitution. In government and legislature, these were increasingly the parties of the centre and of the right and, in the judiciary, a monarchist and anti-Republican body of judges. Freedoms devised for the benefit of the ordinary citizen were transmuted—as, during a prolonged phase, the American Constitution was interpreted by the Supreme Court—into formulae for safeguarding the privileged few.

If the draftsmen of our contemporary human rights in the international sphere ever considered this problem, they must have drawn a peculiar lesson from this experience. Apparently they thought it safest to leave the basic human rights and fundamental freedoms so

vague as to allow everyone to interpret these rights and freedoms to his own liking. On this assumption, there is some sense in the meaning of the separation of the contemplated International Bill of Human Rights into a Universal Declaration of Human Rights, a purely optional draft Covenant on Human Rights and a still more far-off Convention for the Implementation of the Covenant on Human Rights.

A further illustration of this technique of being too clever by half is provided by the proceedings at the Geneva Conference on Freedom of Information, 1948. In 1947, the General Assembly, under Soviet pressure, had adopted two resolutions against war-mongering and the publication of false or distorted reports likely to injure friendly relations between States. Both resolutions were brought to the official attention of the Geneva Conference.

The United States Delegation objected to the insertion of any such clause into the draft conventions under discussion; for it opposed sanctioning any extension of government censorship in this way. In order, however, to forestall a still more objectionable Soviet resolution being adopted the United States Delegation itself proposed a mild form of anti-war-mongering resolution. Ultimately the Conference unanimously adopted a text which allowed everyone to feel that he had carried the day. In the Report of the United States Delegation on the *United Nations Conference on Freedom of Information* (1948), this paper victory was described as being 'sufficiently ambiguous to permit varying interpretations, without, however, compromising the American position against government control of the political reporting and expression by news media'.

It should not be imagined that this form of shadow-fighting is the exclusive privilege of cunning politicians. In a mood of revealing self-analysis a distinguished international lawyer has in a more recent work laid bare some of the reasons which had prompted his first draft of *An International Bill of the Rights of Man* (1945):

'There have been abandoned those attempts at compromise solutions which were dictated by the desire—or hope—of achieving universality. Thus, for instance, with regard to the rights of political freedom, i.e., the right to government by consent, Article 11 [actually Article 10] of the draft provided previously as follows: "No State shall deprive its citizens of the effective right to choose their governments and legislators on a footing of equality, in accordance with the law of the State, in free, secret and periodic elections." The important though somewhat ingenious qualifications implied in the words "in accordance with the law of the State" was inserted, not without considerable hesitation, in order to meet the case of States in which the form of government is in fact totalitarian and in which

the equality, freedom, and secrecy of the periodic right of franchise is to a large extent nominal. . . . I have also been unable to resist the force of the objection that it is difficult to justify the attempt to adapt, in this respect, the Bill of Rights to the conditions of electoral franchise in some parts of the United States or in South Africa—for the desire to meet the difficulties presented by the position in those countries was, too, one of the reasons for the form in which that crucial Article of the Bill of Rights had been drafted' (H. Lauterpacht, *International Law and Human Rights*, 1950).

Finally, there are the illuminating instances of pseudo-federal and pseudo-democratic constitutions. In pre-1914 days, specimens of this brand of constitution ranged from Latin America to the Balkans. In the inter-war period, the various Soviet constitutions were shining examples of this type of fundamental laws. Words were taken for deeds or, at least, as a cheque drawn on a brighter future:

'The chapter on the "Fundamental Rights and Duties of Citizens" in the Constitution of Soviet Russia of December, 1936, is no less emphatic in the recognition of the rights of man than the most progressive modern constitutions. There is no reason why with the passing of the revolutionary period of transition in Russia and with the normalisation of international relations the use of extraordinary powers inimical to individual freedom should not tend to diminish" (H. Lauterpacht, *An International Bill of the Rights of Man*, 1945).

Today, the outstanding examples of the West are the semi-Fascist States in Latin America, Portugal and Spain, while in the East, the constitutions of the People's Democracies ably represent this variant of bills of human rights. What is the message of these fabrications? Surely it is that words can mean anything or nothing. If absolute rulers choose to pervert the meaning of words, no subject of any of these totalitarian systems can prevent them from transforming truth into falsehood. With modern techniques of mass control, the ruling minority can even pervert their robots in a short spell of time into believing that they live in a democracy and enjoy all the benefits of basic human rights and of fundamental freedoms.

These samples of constitution-mongering are perhaps the most pertinent experience of all. They indicate the uses to which, in an incongruous reality, ideas may be put. The acrimonious debates on human rights at Lake Success and at the Geneva Conference on Freedom of Information prove that in as loose a world confederation as the United Nations, human rights and fundamental freedoms are condemned to degenerate into pre-war ideologies of the contending



At the highest, these efforts are symptomatic of a 'tendency to seek a sort of compensation for all that is so terribly discouraging in the international outlook of today by dissipating energies to achieve results which prove on examination to mark no real advance' (J. L. Brierly, 'The Genocide Convention,' *The Listener*, 1949). In any Third World War, the bleak function of human rights will be that of the principles of national self-determination and the ideals of democracy in the First and Second World Wars.

It is arguable that, if this happens, the problem may solve itself for wide regions of our world. Perhaps, thereafter, somebody will be possessed of the same involuntary, but all the grimmer, humour which inspired the author of a recent United Nations Study on *The Legal Validity of the Undertakings Concerning Minorities*, submitted to the Commission on Human Rights in the name of the Secretary-General (E CN. 4/367—April 7, 1950): 'Wherever minority populations have disappeared from a territory either as a result of annihilation—which was unfortunately the case for the Jews—or compulsory transfer to the territory of another State—as was the case for the bulk of the German minorities in Poland, Czechoslovakia and Hungary—or because they had fled without hope of returning, their protection is no longer necessary.'

THE UNITED NATIONS : INTERNATIONAL TRUSTEESHIP

'The principle of trusteeship is now applied generally. It applies to all dependent peoples in all dependent territories.'

General Smuts at the San Francisco Conference (Third Meeting of Commission II, June 20, 1945)

SINCE the dawn of European colonisation, Christian conscience has felt uneasy over treating colonies as no man's land and as mere objects of economic exploitation. Papal bulls settled the issue of principle. Colonisation as such was compatible with Christian doctrine. They left open, however, the question how the aborigines were to be treated by the *conquistadores*. Vitoria, the most prominent of the Spanish naturalists, was doubtful of the proposition that the Indian aborigines were 'unfit to found or administer a lawful State up to the standard required by human and civil claims'. Assuming that their governance had to be entrusted to nations of 'more mature intelligence', then, in his opinion, such government should be 'subject to the limitation that any such interposition be for the welfare and in the interests of the Indians and not merely for the profit of the Spaniards' (*De Indis Noviter Inventus*, 1532, I, Sect. III, 408). The impact of such scruples on early Spanish, Portuguese, Dutch and French colonisation remained slight.

So long as the British colonial empire was limited mainly to colonies by settlement on the continent of North America, the moral aspect of colonialism hardly arose. The territories in question were only sparsely inhabited by native populations. The problem was solved by their enforced withdrawal from the settlement areas to adjacent parts of North America. In so far as the settlers themselves were concerned, it was accepted doctrine that they had brought their Common Law with them. Such controversies as were to arise between the white colonies and the mother country did not affect the principle that Locke's conception of all government being a public trust should apply to colonial government. Both sides were agreed on this point. They merely disagreed on two questions: whether the colonial executives should be accountable to the central government in London or to the local organs of self-representation, and

whether the Imperial Parliament had the right to pass colonial legislation.

In British colonial policy, the issue of principle arose over India. Burke faced it squarely in connection with Fox's East India Bill. In his speech in the House of Commons on December 1, 1783, Burke, in a frontal attack, challenged what, five years later—in his speech on the impeachment of Warren Hastings—he aptly called the principle of 'geographical morality'.

'All political power [held Burke] which is set over men, and all privilege claimed or exercised in exclusion of them, being wholly artificial, and for so much a derogation from the natural equality of mankind at large, ought to be some way or other exercised ultimately for their benefit. . . . Such rights, or privileges, or whatever else you choose to call them, are all in the strictest sense a trust; and it is of the very essence of every trust to be rendered accountable. . . . The very charter, which is held out to exclude parliament from correcting malversation with regard to the high trust vested in the company, is the very thing which at once gives a title and imposes on us a duty to interfere with effect, wherever power and authority originating from ourselves are perverted from their purposes, and become instruments of wrong and violence.'

The utilitarians, and Bentham foremost among them, went further and advocated the speedy emancipation of all colonies. Meanwhile, they counselled the European colonial powers to prepare their colonial possessions for speedy independence and, to prove their disinterestedness, to invite colonial administrators from other nations to share in the work of colonial government.

In 1835, through the influence of the Aborigines Protection Society, a Select Committee of the House of Commons was appointed 'to consider what measures ought to be adopted with regard to the native inhabitants of countries where British settlements are made, and to the neighbouring tribes, in order to secure for them the due observance of justice and the protection of their rights, to promote the spread of civilisation among them, and to lead them to the peaceful and voluntary reception of the Christian religion'. Two years later, the Committee reported that the contact between Europeans and colonial populations had been, 'unless when attended by missionary exertions, a source of many calamities to uncivilised nations'.

Starting with Lord Durham's celebrated Report on the Affairs of British North America (1839), the major British colonies by settlement went through a gradual process of emancipation until, by the end of the First World War, the white Dominions emerged as independent nations. The Statute of Westminster of 1931 consummated this process of devolution. In the dependent parts of the

British Empire, too, Burke's conception of colonial government as a 'sacred trust' became the accepted official doctrine of a liberal British colonial administration. In Britain as elsewhere, the reality of this conception depended on the strength, and concern with colonial affairs, of three forces: political, economic and humanitarian groups at home, foreign governments, and colonial nationalism.

Since the early nineteenth century, colonial maladministration had become a favourite topic for opposition parties in the parliaments of most colonial powers. Humanitarian and religious bodies, too, mobilised public opinion and helped to keep the issue alive. Far-sighted profit interests worked in the same direction. While local mining industries, for instance, were primarily concerned with cheap labour, export industry at home could not expect to thrive on low standards of living in the colonies. Thus, for different reasons, humanitarian idealism and an influential section of vested economic interests worked towards the same goal: better colonial government.

Governments of colonial powers had to bear in mind group interests and public opinion not only at home, but also abroad. Frequently, the humanitarian concern of foreign governments and of public opinion abroad in the welfare of natives in the colonies of other powers was only the ambiguous cover for more direct economic interests in freedom of commerce and of navigation in the colonies of other countries. Under attack from this quarter, the governments of colonial powers tended virtuously to disclaim any monopolist designs towards their colonies. Though their colonial policies might appear to be protectionist, all they really aimed at was administrative efficiency, local prosperity and the preparation of the colonial peoples for ultimate self-government.

Before 1914, local nationalism, which is now the chief driving force towards colonial reform, played only an insignificant role. Humanitarianism and liberalism and, in some instances, external pressure spread the voluntary acceptance by governments of the principle of the 'dual mandate' (Lord Lugard, *The Dual Mandate in British Tropical Africa*, 1926). The idea that colonies were a double trust for the benefit of both colonial peoples and of the world at large was, however, applied by the colonial powers on a sliding scale. In terms of relativity, it came nearest to being a standard of achievement in the British and Netherlands colonial empires. To a lesser extent, France made an attempt to live up to such self-imposed standards. The word was, however, sheer mockery if applied to the Belgian Congo or to the Spanish and Portuguese colonies.

In every case, there was no effective control of the colonial administrations. Even in democratic countries, supervision by

metropolitan parliaments was somewhat cursory. Matters nearer home claimed most of the overcrowded timetables and interests of constituency-minded parliaments.

Effective control of any government comes either from above or from below. Control from above presupposes an international order which, in the pre-1914 period did not exist. Within limits, control from below, that is to say, by the colonial population is possible. Yet colonial powers usually reserve to themselves at least the vital matters of foreign policy and defence. Thus, the rudimentary international control of colonial policy developed before the First World War was primarily due to economic interests, flavoured though with humanitarian considerations.

By the Berlin Act of 1885, freedom of commerce and navigation was established on the Congo and Niger. The signatories bound themselves to 'watch over the preservation of the native tribes and to care for the improvement of the conditions of their moral and material well-being'. A powerful international commission, consisting of representatives of each of the signatories, was established to supervise the execution of the Act. The only snag was that none of the signatories ever nominated its representative.

In the General Act of the Brussels Conference of 1895, further measures for the suppression of the slave trade in the territories of the colonial powers in Africa were agreed upon, thus crowning British efforts on the international scale made consistently since the Peace Congress of Vienna. The powers agreed, too, on a zone in which the import of firearms and ammunition and the import and manufacture of spirituous liquor were prohibited. In this way, some of the duties of the self-appointed colonial trustees became obligations under international law. Each of the signatories could request compliance with the standards laid down in these treaties, revised and brought up to date by the Convention of St. Germain of September 10, 1919.

The Congo Act of 1885 was regarded by Temperley as 'the only previous analogy in history to the mandatory system' of the post-1919 period (*A History of the Peace Conference of Paris, 1920-24*, vol. 6). In a formal sense, this is true. The Congo Act provided international stipulations both for the rights of other powers and for those of the native population. In reality, however, the Free Association of the Congo, recognised in equivocal terms by the powers, subsequently styled the Congo Free State, and replaced in 1908 by direct Belgian administration of the area, administered the territory under its jurisdiction like any other sovereign State. This analogy breaks down over two essential differences. The Congo Act did not rule out annexation of the 'mandated' territory and the provisions

contained in it for international supervision of the 'mandatory' by an international commission were never implemented.

In the course of the Conference of Algeciras of 1906, President Roosevelt suggested to the German Emperor a compromise over Morocco in which the idea of an international mandate over a colonial territory was more articulately ventilated :

'If this arrangement is made, the Conference will have resulted in an abandonment by France of her claim to the right of control in Morocco, answerable only to the two powers with whom she had made treaties, and without responsibility to the rest of the world, and she will have accepted jointly with Spain a mandate from all the powers, under responsibility to all of them for the maintenance of equal rights and opportunities. And the due observance of these obligations will be safeguarded by having vested in another representative of all the powers a right to have on their behalf full and complete reports on the performance of the trust, and with the further right of verification and inspection' (Message of March 7, 1906—*Die Grosse Politik der Europäischen Kabinette, 1871-1914, 1925, vol. 21*).

Although William II turned down the proposal, it was to receive wider attention in the next phase of colonial trusteeship. As conceived by Theodore Roosevelt, the scheme differed little from the then current conception of an international protectorate, the solution adopted in substance, if not in form, for Morocco by the Conference of Algeciras. The most that can be said is that, in the pre-1914 period, the idea of an international mandate, implying internationally delegated authority, had entered into diplomatic language. At their best then colonial policies were conceived and executed in terms of national trusts, limited by somewhat elastic international obligations in certain parts of West and Central Africa.

THE LEAGUE MANDATES

In a vague way, official Allied thought during the First World War contemplated a 'special regime' for Palestine (Agreement between France, Great Britain and Russia of February 19, 1916, and the Anglo-French Treaty, the Sykes-Picot Agreement of May 9, and 16, 1916) and the internationalisation of the German colonies.

The mandate system, as it was to emerge in the Covenant of the League of Nations, was first clearly conceived in a Memorandum of the British Independent Labour Party of August 28, 1917, and in proposals made by the London Inter-Allied Labour and Socialist Conference in February, 1918.

In scope and content, the fifth of President Wilson's Fourteen Points remained somewhat enigmatic: 'A free, open-minded, and absolutely impartial adjustment of all colonial claims based upon a

strict observance of the principle that, in determining all such questions of sovereignty, the interests of the populations concerned must have equal weight with the equitable claims of the Government whose title is to be determined.'

General Smuts is usually credited with having invented the idea of the League mandates (*The League of Nations. A Practical Suggestion*, 1918). He certainly used the conception of an international mandate. His intention, however, was only to apply this pattern as a transitional regime to the unsettled parts of Eastern Europe and of the Near East. Nothing was further from his mind than to subject the German colonies to any system of international mandates: 'The German colonies in the Pacific and Africa are inhabited by barbarians who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any idea of political self-determination in the European sense. They might be consulted as to whether they want their German masters back, but the result would be so much a foregone conclusion that the consultation would be quite superfluous.'

By then, however, the British Foreign Office was thinking in terms of League mandates for at least some of the German colonies in Africa and for the non-Turkish parts of the Ottoman Empire. On the American side, G. L. Beer worked on similar lines. When President Wilson became acquainted with General Smuts' proposals, he took to them, but added a Wilsonian touch to the General's brain-wave. To the chagrin of the British Dominions and of Japan alike, he stubbornly insisted on extending the mandate system to all the German colonies. This was another instance of a happy blend of American idealism and interests. By this device, some limitations at least could be imposed on Japan in her administration of the former German dependencies in the Pacific.

The solution adopted in general outline by the Peace Conference of 1919, defined by the Supreme Council and executed by the Council of the League of Nations, gave to the victorious powers the substance of their real objectives, but in the form, and with the limitations, of League mandates. The new international system was based on several distinct principles.

The Principle of Non-Annexation. The portions detached from the Ottoman Empire were put into a class by themselves (A-Mandates). They were certified as having 'reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone' (Paragraph 4 of Article 22 of the Covenant).

Under this formula Great Britain was given the mandates for Palestine and Iraq, while Syria and the Lebanon went to France.

The second class was formed by the German colonies in Central Africa (B-Mandates). Subject to specifically enumerated international obligations, the mandatorys of these areas were to be responsible for the direct administration of these territories (Paragraph 5 of Article 22 of the Covenant). The Cameroons and Togoland were each divided into British and French mandates. The greater part of German East Africa was entrusted to Great Britain, and a small portion, Ruanda-Urundi, was given to Belgium.

It remained to dispose of German South-West Africa and the German islands in the Pacific (C-Mandates). 'Owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances', they were to be administered 'under the laws of the Mandatory as integral portions of its territory' (Paragraph 6 of Article 22 of the Covenant). The international safeguards for the indigenous population which were stipulated in the case of the B-Mandates, but excluding the principle of the open door, applied equally to the C-Mandates. German South-West Africa was allocated to the Union of South Africa, the German Pacific islands north of the equator to Japan, those south of the equator together with German New Guinea to Australia, Samoa to New Zealand, and Nauru to the British Empire in the joint administration of Australia, New Zealand and the United Kingdom. Each of the mandatorys undertook to exercise its trust 'on behalf of the League' (Paragraph 1 of Article 22 of the Covenant). In separate mandate treaties, concluded between the Council of the League of Nations and each mandatory, the rights and duties of the mandatorys were still more specifically defined.

The Principle of Tutelage by Advanced Nations. What are advanced and backward nations is arguable. At the Peace Conference of 1919, the greater powers, including Japan, had little doubt that they all belonged to the category of advanced nations. They were to exercise an international tutelage, a 'sacred trust of civilisation', over some of the less advanced peoples. The object of this trust was defined as the 'well-being and development' of the peoples under the mandate system (Paragraphs 1 and 2 of Article 22 of the Covenant). Compared with the pre-1914 period, the emphasis on the international scale had changed from insistence on the principle of the open door to concern for the populations in the territories under League mandates.

The Principle of the Open Door. In the Covenant this standard was prescribed only for B-Mandates. As a result, however, of

pressure from the First League Assembly and from the United States, the principle of the open door received some recognition in the mandate treaties for the A-Mandates and in the corresponding treaties between the mandatories and the United States.

In order not to be excluded from the economic development of these countries, especially in so far as their oil resources were concerned, the United States made it clear that, without specific recognition of its right of equal economic opportunity, it would not recognise these new regimes. As defined in Article 18 of the Mandate Treaty for Palestine and accepted by the United States in the Anglo-American Treaty of December 3, 1924, however, the standard of the open door was subject to considerable limitations in the interest of the natural resources of Palestine and of her population. It also allowed for regional customs treaties of a preferential character.

The Principle of Military Non-Exploitation. In the Covenant this principle was expressly stated only for B- and C-Mandates. In these territories, military training of natives was permitted only for police purposes and for the defence of the mandate in question. The establishment of fortifications or military and naval bases was prohibited.

In the Mandate Treaties for the French Cameroons and Togoland, France secured exceptions. These accorded with promises made to her in the discussions on Article 22 of the Covenant in the Supreme Council, but were in open contradiction to the text of the Covenant. She received permission, in the event of a 'general war', to use elsewhere troops levied in these two territories.

The Mandatories of the A-Mandates were expressly authorised under their mandate treaties to use the roads, railways and ports of these territories for the movement of armed forces and the carriage of fuel and supplies.

In contrast to the somewhat lax formulation in the Treaties for the A-Mandates of the principle of military non-exploitation as laid down in the Covenant, the Permanent Mandates Commission interpreted strictly the corresponding clauses of the B- and C-Mandates. The text of these Articles could be taken to mean that, for purposes of effective local defence, such forces might be employed outside the mandated territories. In the opinion of the Commission, however, which was confirmed by the League Council, mandatories were not entitled to such use of native military forces and they were even held to be out of order in accepting volunteers from such territories for service abroad.

The Principle of Consultation. According to the Covenant, the wishes of the populations of the A-Mandates were to be 'a principal

consideration in the selection of the Mandatory' (Paragraph 4 of Article 22). This principle was, however, ignored.

Prince Feisal, one of the sons of King Husein, came to Paris to claim fulfilment from the Allied Powers of their wartime promises to the Arabs. He was denied a hearing and treated as an exotic oddity.

President Wilson suggested sending a Three-Power Commission to Greater Syria to inquire into the wishes of the local population. Clemenceau and Lloyd George agreed 'in principle'. The French, however, used tactics of passive resistance and refused to appoint their members to the Commission. In these circumstances, Lloyd George regretfully declared his inability to proceed to the appointment of the British members. In the end, the American members went on their own. They reported that the peoples of Syria desired to remain united, and that Allied pro-Zionist policy contradicted the principles proclaimed by the Allies 'for the establishment of national governments and administrations, drawing their authority from the initiative and free choice of the native populations' of Syria. None the less, Syria was divided into a French Mandate for Syria and the Lebanon and a British Mandate for Palestine.

The Principle of Ultimate Independence or Self-Government. In the Covenant, the final destiny of the mandated territories was left somewhat vague. The formulation of Paragraph 4 of Article 22 suggests that, at least in the case of the A-Mandates, the peace-makers envisaged ultimate independence for these territories. In Paragraph 5 the 'stage' reached—or rather not yet reached—by the populations of the B-Mandates was given as the reason why they had to be subject to direct administration by the mandatories. The implication of Paragraph 6 was that in the B-Mandates the mandatory system was to last indefinitely.

The draftsmen of Article 22 of the Covenant thought in terms of gradualness. Independence might conceivably be the culmination of all mandatory regimes. Participation in government and self-government might be intermediary stages. This approach was fully in accordance with the unstated major premise of the Peace Conference that democracy in the Western sense was the highest form of political development.¹ The Permanent Mandates Commission and the League Council acted on this assumption when the former drafted its Memorandum on the general conditions which had to be fulfilled before a mandatory regime could be terminated, and when, on September 4, 1931, the latter approved this policy-making document.

In Palestine, the Mandatory was set an insoluble problem. The

establishment of a Jewish National Home was bitterly resented by the Arab ruling classes and by the Arab masses under their control. Self-government or an independent Arab Palestine would have meant either the condemnation of the Jewish population to the status of a permanent minority or, more likely, the destruction of the Jewish National Home in Palestine. The active promotion of the Jewish National Home, however, could only be attained by the denial of democratic rights to the majority of the Palestinian population. After initial oscillations, Great Britain proceeded to an increasingly restrictive interpretation of the articles of the Mandate which related to the Jewish National Home. The White Paper of 1939 (Cmd. 6019) put the seal on this development. In the end, Great Britain abandoned her task and left it to the free play of the contending forces to find out for themselves who, in Palestine, was 'able to stand alone'.

The contradictory promises made during the war to Jews and Arabs alike made it impossible to honour either of them to the letter. Yet Great Britain did her best to do what could be done in the interest of Arab nationalism. With the consent of the League Council and of the United States, Palestine was in fact split into two in 1922, and Transjordan was handed over, under nominal responsibility to the British mandatory, to the Emir Abdullah as a substitute for the throne promised to him in Iraq. Feisal, another of ex-King Husein's sons, became King of Iraq, and Great Britain assisted him in the speedy termination of the mandatory system in Iraq in 1932 and sponsored the admission of Iraq to League membership. The French mandate over Syria was a prolonged exercise in the policy of *divide et impera* and ended ingloriously with French evacuation.

At its closing session, the League Assembly gave its blessing to these de facto developments and welcomed 'the termination of the mandated status of Syria, the Lebanon, and Transjordan, which have, since the last session of the Assembly, become independent members of the world community' (Resolution of April 18, 1946). Thus, for what it was worth 'under the strenuous conditions of the modern world', all the A-Mandates became independent States. In the case of the B- and C-Mandates, it was left to the mandatories to decide whether to continue these regimes or to transform them into trust territories of the United Nations.

The Principle of International Supervision. The League Council was charged with the supervision of the mandatories. The mandatories had to make annual reports to the Council. The reports were received and examined by the Permanent Mandates Commission. The Commission had to advise the Council on all matters

relating to the observance of the mandates. It was composed of ten members, the majority of whom were in fact, nationals of non-mandatory powers. They were appointed by the Council and selected for their personal merits and competence. While they were members of the Commission, they were not allowed to hold any office which would have made them directly dependent on their governments.

The inhabitants of territories under mandates had a right to petition the Permanent Mandates Commission. The petitions had to reach the Commission through the government of the mandatory, which was entitled to add its own observations. Finally, the Assembly of the League established the practice of discussing questions connected with the mandate system in the general debate on the Secretary-General's annual report and in the more intimate atmosphere of its Sixth Committee.

With limited machinery, the Permanent Mandates Commission succeeded in making constructive use of its limited powers. The Commission comprised colonial experts of repute who had to be taken seriously. By reason of the international character of the Commission, its proceedings received wider publicity than colonial debates in national parliaments. In this way, mandatories were spurred to making greater efforts than in their own countries or colonies.

Thus, during the inter-war period, the Union of South Africa spent on the native population of South-West Africa more than it received from it through direct taxation, while in the Union itself the reverse was true. In proportion to the white population, natives in South-West Africa also owned more land than in the Union. Moreover, in the mandated territory, they were not subject to the poll tax which, wherever it applies, drives the natives from their reserves and provides cheap industrial and agricultural labour.

Similarly, as compared with between 11 and 16 per cent of the revenues in French West African and Equatorial colonies, 25 per cent of the annual revenues were spent on social and economic services in the French mandates in West Africa. Budgets and population figures, too, when compared, were in favour of territories under mandate as against neighbouring colonial possessions of the same powers.

The exception to the rule was provided by the Australian Mandate in New Guinea. According to Dr. Mair's account (*Australia in New Guinea*, 1948), natives in Papua were better treated than in the neighbouring mandated territory. Nevertheless, it is still true that, to a limited extent, those who devised the system of League mandates in 1919 became the captives of their own ideology, and that most of the

to their obligations. That is not to say there The League was helpless when confronted with anagement by France of her mandate for Syria e puzzles posed by British policies in Palestine, o disregard of the obligation not to fortify the slands. Though the Mandates Commission does not affect the decisive point: for control, international, to be effective, there must be i the background.

Mandates Commission was merely an advisory it could muster no greater authority than the n which its authority stemmed. Nevertheless, ons, the mandates experiment achieved results d hardly envisaged. It served to proclaim the ip as a general standard of colonial policy and d and practised levels of colonial administration uch were not subject to the mandates system.

ders of the League had been careful to avoid any commitments regarding colonial dependencies cle 23 (b), they had undertaken to 'secure just ve inhabitants of territories under their control', o, and in accordance with, the provisions of tions existing or hereafter to be agreed upon'. on of the Convention of St. Germain of Septem- ernational conventions of a specialised character, gton Treaty for the Limitation of Naval Arma- , 1922 (maintenance of the status quo regarding val bases), the Anti-Drug Conventions of 1925, pertinent international labour conventions, such materialise. In the practice of the League of (b) of the Covenant remained a dead letter.

tical, military and economic interests of the ch demanded the close control of colonies or, at ation with them were still as pressing as ever. re, however, faced with the growing national f the colonial populations and the increasing nd Communist ideologies to their intelligentsia. international obligations, the concept of the trust ideology of colonial powers in the course of the

idea was the basis of the mandates system, translates treaties into binding legal obligations and tinents under the supervision of an international

commission, had a contagious effect. Instead of seeing international mandates as the exception to the rule, as they were, progressive public opinion in the Western world, especially in the United States, and large sections of the colonial peoples themselves came to regard international trusteeship as the most advanced form of colonial government.

TRUSTEESHIP UNDER THE UNITED NATIONS

The future of colonies did not have to concern the United Nations unduly as a war aim. Germany no longer had any colonies. Even most of the colonial populations themselves realised what fate would befall them if Germany were to win the war and were to be in the position of realising Hitler's dream of a huge German colonial empire in Central Africa. The colonial record of Fascist Italy—road-making apart—was such as to make it self-evident that Italy would be deprived of her colonies. The oppressive policy pursued by Japan in the non-Japanese territories under her control suggested, too, the necessity of drastically curtailing the Japanese empire. The use which Japan had made of her League mandate to further her aggressive designs made it a foregone conclusion for the United Nations that Japan would be relieved of her mandated territories. These were not, however, pressing problems.

Thus, the Atlantic Charter merely restated the general principle of non-annexation. Of necessity, this implied that the territories to be taken away from Italy and Japan would either be granted independence or be subject to some measure of international control. The United States was still interested in the principle of the open door. This was covered in general terms by the promise held out in the Atlantic Charter of access by all nations to the trade and to the raw materials of the world on equal terms.

One point on which Mr. Churchill felt strongly was that American idealism—or sentimentalism—on colonial questions should not lead to interference by anyone with internal developments in the British Commonwealth and Empire. To make matters explicit beyond any possible doubt, Mr. Churchill explained to the House of Commons on September 9, 1941, that the United Kingdom was committed to the 'progressive evolution of self-governing institutions in the regions and peoples which owe allegiance to the British Crown' by her own pledges and policies, but not by the Atlantic Charter.

The dominant trends in British colonial thought towards the end of the Second World War were still less on the line of international trusteeship. There is no doubt that the growing self-confidence

inspired by the later stages of the war strengthened the hands of those in this country who had opposed any form of international intervention in the administration of the colonies, and there were indeed many who hoped that it might be possible to modify, if not abolish, the system of mandates' (Lord Hailey, 'Colonial Trusteeship', *The Times*, October 3, 1945).

President Roosevelt's views on the colonial problem were in the Wilsonian tradition: independence for India; development of the colonial possessions of other powers towards self-government or independence in a system of collective security, if possible—as suggested by Wendell Wilkie and Cordell Hull—in accordance with timetables fixed by the colonial powers; and supreme unconcern with any potential interest of the world in the United States colonial empire. President Roosevelt later thought about the possibility of establishing at strategic points around the world 'free ports of information' to give people everywhere access to unbiased information and strategic bases under the control of the United Nations in places such as Formosa, Dakar and Tunisia.

When, in the Spring of 1943, Mr. Eden visited Washington, the fate of the Japanese mandates in the Pacific was discussed. President Roosevelt had in mind some kind of trusteeship, whereas Mr. Eden favoured outright transfer of these islands to the United States. To judge by Hopkins' notes of these meetings (R. E. Sherwood, *The White House Papers of Harry L. Hopkins*, 1949, vol. 2), Mr. Eden made it clear that he thought little of the idea of international trusteeship.

Matters were not carried much further at the Cairo Conference of the British, Chinese and United States war leaders. Their joint *Communiqué* of December 1, 1943, merely announced that, together with all the other Japanese possessions inhabited by non-Japanese populations, Japan was to be stripped of her mandated territories. At the same time, the three powers repeated that they themselves had no desire for territorial expansion.

The Dumbarton Oaks Proposals were silent on colonies, mandates and trusteeship. At Yalta, Stettinius raised the subject at the meeting of the three Foreign Ministers of February 9, 1945. He won the consent of his colleagues to the principle that the United Nations should have some jurisdiction in this field and be allowed to create machinery for a trusteeship system. When, however, Stettinius reported on this preliminary understanding to the formal meeting of the Conference on the same day, Mr. Churchill 'exploded' (E. R. Stettinius, *Roosevelt and the Russians*, 1950).

The combined efforts of the President and Stettinius were needed

to explain that the proposal was limited to the League mandates and enemy territories. Mr. Churchill then turned to Marshal Stalin and inquired how he would feel about a proposal to have the Crimea internationalised for use as a summer resort. Stalin obligingly replied that he would be delighted to put the Crimea as a permanent meeting-place at the disposal of the Big Three. Hopkins' and Stettinius' records confirm each other on these more intimate touches of the Yalta Conference.

Mr. Churchill consented to the proposal that, prior to the United Nations Conference (of San Francisco), the five permanent members of the future Security Council should have further consultations on the question of territorial trusteeship. It was formally recorded in the Protocol (Cmd. 7088—1947) that the acceptance of this recommendation was :

'Subject to its being made clear that territorial trusteeship will only apply to (a) existing mandates of the League of Nations; (b) territories detached from the enemy as a result of the present war; (c) any other territory which might voluntarily be placed under trusteeship; and (d) no discussion of actual territories is contemplated at the forthcoming United Nations Conference or in the preliminary consultations, and it will be a matter for subsequent agreement which territories within the above categories will be placed under trusteeship'.

Mr. Churchill was willing to include category (c) but he insisted that any transfer should be purely voluntary. In this way, he headed off any attempt to force colonial powers—other than enemy States—to accept United Nations trusteeship for any of their colonies.

This problem had actually arisen at the Cairo Conference over French Indo-China. President Roosevelt had a low opinion of French achievements in South-East Asia. He asked General Chiang Kai-shek for his opinion, and the latter suggested a trusteeship. At Teheran, the President consulted Marshal Stalin who thought that 'the idea of a trusteeship was excellent'. Apparently, Mr. Churchill still objected to the idea, and, according to Stettinius, President Roosevelt then used an argument which, at Yalta, Mr. Churchill had not forgotten: 'Now, look here, Winston, you are outvoted three to one.' In future, there was not to be any outvoting on colonial questions.

Considering this internal history of international trusteeship during the Second World War, it is odd to be authoritatively informed in the official *British Commentary on the Charter of the United Nations* (Cmd. 6666—1945) that prior to the San Francisco Conference 'there had been no preliminary international discussions' on the subject of dependent territories.

At the San Francisco Conference the Sponsoring Powers did not propose any joint amendments to the Dumbarton Oaks Proposals to cover trusteeship but they agreed to place the subject on the agenda of the Conference. It was allocated to Committee II/4, one of the four committees established by the Commission on the General Assembly. The Committee had before it a working paper by Commander Stassen, one of the United States delegates. There were also proposals and comments from Australia, China, Ecuador, France, Mexico, Panama, the Soviet Union, the United Kingdom, the United States and Venezuela.

In sixteen meetings, the Committee worked out a scheme on which it reached full agreement. The Committee was fortunate in its Chairman, Fraser of New Zealand, and in the contribution made to its work by Commander Stassen. Commission II, with General Smuts as Chairman, received the Report of Commission 4 in an atmosphere of mutual goodwill and tempered optimism. In his speech at the third meeting of Commission II of June 20, 1945, Mr. Stassen handed a special bouquet to the Soviet Union :

'In the first instance, may I say to you that there was a very distinct and marked contribution made to this chapter by the Delegates of that great nation that played such a large part in rolling back the Nazi hordes at the peak of their onslaught—I speak of the Delegates of the Soviet Union. Participating in the five-power consultations which took place continually on the various suggestions and documents affecting this Chapter, Mr. Novikov of that Delegation frankly and directly and earnestly made a very marked and co-operative contribution, attended every meeting of the Committee, and joined with us there in the formulation of its final work. At various special stages of the consultations Ambassador Gromyko and Mr. Sobolev of that Delegation made very distinct contributions.'

The expansion of Articles 22 and 23 (b) of the Covenant of the League of Nations into three chapters in the Charter of the United Nations suggests a marked development of the idea of international trusteeship under the United Nations. According to Mr. Trygve Lie's speech at the first meeting of the Trusteeship Council (March 26, 1947), 'the international trusteeship system is no mere prolongation of the mandates system under the League of Nations. It is a new system of international supervision. Its scope is wider, its power broader, and its potentialities far greater than those of the mandates system.' In order to test this thesis, it is advisable to compare the theory and practice of the United Nations in this field principle by principle with those of the League of Nations.

The Principle of Non-Annexation. The trusteeship system of the United Nations may apply to three categories of territories : League

mandates; territories detached from enemy States as a result of the Second World War, and territories placed under trusteeship by States responsible for their administration. It remains entirely for the mandatories, the victorious powers or the sovereigns of territories in the last-mentioned category to decide for themselves whether they desire to submit any such territory to trusteeship under the United Nations. Paragraph 2 of Article 77 of the Charter expressly provides that 'it will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms'.

With the exception of the United Kingdom in respect of Palestine and the Union of South Africa in respect of South-West Africa, all the mandatories concluded trusteeship agreements with the United Nations for their still surviving mandated territories. In accordance with the trusteeship agreements, the obligations of the trustees can only be modified and, *a fortiori*, terminated with the consent of the appropriate organs of the United Nations, normally the General Assembly but, in the case of strategic areas, the Security Council. Thus, irrespective of the obligations of the trustees under the Charter and under the individual trusteeship agreements, it is legally impossible for the trustees to annex any trust territory.

Compared with the League mandates, most of the trusteeship agreements allow more freely for customs, fiscal or administrative unions and for the establishment of common services between trust territories and neighbouring areas. Moreover, the trustees are free to integrate the trust territories into their own military organisation. Thus, the individuality of the trust territories is less protected than was the case with the A- and B-Mandates.

With the exception of the trusteeship agreements for Tanganyika, Western Samoa and the Pacific Islands, each of the trusteeship agreements provides that the trustee may administer the trust territory in accordance with his own laws as an 'integral part' of his territory.

In the Covenant, the term was used to indicate that C-Mandatories were free to administer such territories as integral parts of their metropolitan territories, but it also found its way into the texts of the B-Mandates. Here it meant that the mandatory might administer such territories as integral parts of any adjoining territories of his own. In the Charter and trusteeship agreements, the distinction between B- and C-Mandates has disappeared, and the phrase has become meaningless; for the administration of each trust territory is subject to the limitations of the Charter and of each individual trusteeship agreement. Beyond this, whether or not a trusteeship treaty contains

this formula, the trustee is free to use his own discretion, but always in the spirit of the trust granted to him.

At the First Session of the General Assembly, France and Belgium expressly stated that they did not read into the phrase any claim to authority to diminish the political individuality of the trust territories, and the United Kingdom disclaimed any intention of asserting British sovereignty in any of her trust territories.

Similarly, it is irrelevant that the Covenant and the mandate treaties stipulated expressly for the exercise of the tutelage by mandatories 'on behalf of the League', whereas no corresponding phrase is to be found in the Charter and in the trusteeship agreements. As long as the United Nations exists, what matters is the supervision of the trustees by the General Assembly or, in the case of strategic areas by the Security Council, and by the Trusteeship Council.

The issue of the residuary sovereignty is likely to assume practical importance in exceptional cases. If a trustee seriously abused his powers and broke his obligations under the Charter and the trusteeship agreement, such a contingency might arise. In such a hypothetical situation, the United Nations could claim a relatively better title than anyone else to the right of disposing of the trust territory. In any case, the jurisdiction of every trustee rests exclusively on the trusteeship agreement and a defaulting trustee cannot derive any rights from a treaty which he himself has broken. The trustee would have forfeited his right to be consulted under Article 79 of the Charter and under corresponding Articles of any of the trusteeship agreements.

The United Kingdom did not submit a trusteeship agreement for Palestine to the United Nations. On November 13, 1945, Mr. Bevin made a statement on Palestine in the House of Commons. Its most significant feature was the fact that he, and not the Colonial Secretary, defined the Government's policy. Owing to the complexities of the problem of Palestine—interlocked as it was with the question of displaced persons in Europe and with relations with the United States and the Levantine-Arab States—the issue had become a Foreign Office responsibility.

Mr. Bevin announced that the Government had invited the United States to participate in a joint Anglo-American Committee to examine the question of European Jewry and the Palestine problem. He expressed the hope that this inquiry would facilitate the 'arrangement placing Palestine under trusteeship'. The United States accepted the invitation. The Committee assembled in January, 1946, and submitted its Report to the two Governments on April 20,

1946 (Cmd. 6808). The Committee recommended for all practical purposes the rescission of the Chamberlain White Paper of 1939 regarding the limitation of Jewish immigration and restriction of land sales; the immediate admission of one hundred thousand Jews to Palestine, as President Truman had asked Mr. Attlee in a personal letter in September, 1945, and a continuation of the Mandate, pending its replacement by a trusteeship agreement. The Report ignored partition and assumed that the unity of the mandated territory should be maintained. By removing any artificial restriction on Jewish immigration, the implementation of the Report would have led to a gradual shift in the balance of population in favour of the Jews.

Mr. Attlee made it clear that, without United States financial assistance, the immediate admission of one hundred thousand displaced persons was impracticable. He added the further condition that the illegal armies in Palestine should be disarmed and disbanded. In the state in which Palestine then was, this was an invitation to the Jews to hand themselves over with good grace to the tender mercies of the Arabs. At the Labour Party Conference at Bournemouth in June, 1946, Mr. Bevin, too, made it clear that the Government of the United Kingdom did not intend to act on the Report.

The real issue was that to work the Mandate meant to run counter both to Jews and Arabs alike. To side with the Jews would have been the only solution which, in terms of policing, could have been locally enforced without serious difficulties. It would, however, have cost Britain dear in terms of sympathies in the Levantine-Arab area and in the Muslim world at large. To liquidate the Jewish State within the State would have required repressive action on a scale which public opinion in the United Kingdom and abroad, especially in the United States, would not have tolerated.

During this period of procrastination, the Government of the United Kingdom adopted a policy of half-measures in Palestine which, without being decisive, merely exasperated both sides, endangered the lives of British soldiers unnecessarily and led to a crescendo of terrorism and community strife little short of open civil war. In February, 1947, Mr. Bevin came out with a new plan of his own which amounted to the establishment of an independent Arab State with a Jewish minority, a new version of the White Paper of 1939. A few days later, he had to confess failure and declared the willingness of the British Government to submit the whole issue to the United Nations.

On April 2, 1947, the United Kingdom asked the Secretary-General to convene a Special Session of the General Assembly so

that, at its Second Session, the General Assembly should be able to make considered recommendations under Article 10 of the Charter. The Special Session of the General Assembly opened on April 28 and appointed a Special Committee (UNSCOP) to prepare a report.

The recommendations of the majority Report (August 31, 1947) were in favour of the partition of Palestine into Jewish and Arab States and of the establishment of a *corpus separatum* for Jerusalem, all three parts to be joined in an economic union. On November 29, 1947, the General Assembly adopted the Report, with the Soviet Union and the United States in strange unison. The Government of the United Kingdom refused to implement the recommendations of the General Assembly, as they did not meet with the approval of both Jews and Arabs, and announced its intention of bringing the Mandate to a speedy end and of withdrawing from the scene.

At the request of the Security Council, the Secretary-General of the United Nations convened a second Special Session of the General Assembly for April 16, 1948. This move covered the failure of United States policy in the Security Council to put the authority of this body behind the Partition Plan.

By then, the discussions at Lake Success had assumed an air of utter unreality. British withdrawal from Palestine was already under way and was completed by May 15, 1948. The British exodus was carried out in a manner which—whatever the intentions may have been—made certain that the vacuum left would be filled by war. In this situation, all that the United Nations could usefully do was to offer its services of mediation and to wait until the war had reached a stage when truce or peace might be re-established in the Holy Land. By the combined efforts of the United Kingdom and of the United States, the Levantine-Arab States were prevented from exhibiting indefinitely their military non-existence, and the United States took it upon herself to put Israel on the leash.

At its Fourth Session (December 9, 1949), the General Assembly tried to salvage Jerusalem from the de facto partition of Palestine between Israel and Jordan. It instructed the Trusteeship Council to draw up a statute for the international enclave of Jerusalem. The Trusteeship Council speedily completed its task, but wisely left open the date upon which the statute was to come into operation. Its work had at least one constructive result. It united Israel and Jordan—if only against the United Nations. In 1950, the General Assembly again grappled with this intractable issue. Israel and Jordan were willing to assent to a Swedish plan for the protection of the Holy Places under United Nations supervision. The Latin-American countries and the Levantine-Arab States, with the exception of

Jordan, made it known that they would oppose the proposal. Thus, there was no prospect of obtaining the necessary two-thirds majority for this compromise plan. The unholy alliance between these two *blocs* of small irresponsibles had celebrated another negative victory.

The liquidation of the Mandate for Palestine is of little credit to any of the powers concerned. British policy accomplished the rare feat of uniting on this issue the Soviet Union and the United States. It upset relations with the Levantine-Arab States nearly as much as with their enemies. If inspired by strategic considerations, it failed to attain these objectives and exploded the myth of the relevance of the Levantine-Arab armies in any major war. As anyone might have known who witnessed the Iraqi rebellion and observed the activities of the Grand Mufti in and outside Palestine—including Berchtesgaden—to rely on the ruling cliques in the Near-Eastern States is like building on shifting sand. The Near East will be controlled, not by sympathy and gratitude, but by the biggest battalions.

It would be unfair to concentrate exclusively on Mr. Bevin's mismanagement of this issue. The United States, too, displayed an extraordinary capacity for looking at a problem of world politics through the spectacles of domestic policy and for indulging in nebulous projects, the implementation of which was to be left to the United Kingdom. The Soviet Union was at least consistent in pursuing a policy which would lead to the maximum of embarrassment for the United Kingdom.

In such a situation, most of the efforts made by the organs of the United Nations were necessarily vain. Worse than that, the manner in which majorities were obtained—delegates being induced to absent themselves, and pressure being put on governments to change instructions to their delegations at Lake Success—not only cheapened those who were amenable to such degrading manoeuvres, but also left its stains on the United Nations. Both the follies of the powers and the United Nations' work of Penelope had, however, their repercussions.

The world was crudely reminded that nationhood might still have to stand the test of ordeal by battle. Those who abhorred terrorism on grounds of principle had to learn that, against a civilised power, terrorism might materially assist in the struggle for independence. Thus, the end of the Mandate for Palestine refreshed all the memories of the jungle from which the nations hoped to escape. Lonely figures, like Mr. Churchill, constantly counselling, in the House of Commons, the course of duty and honour, or men on the spot like Count Bernadotte and his indefatigable successor, Dr. Bunche, only

served to underline by way of contrast the depressing character of the whole sordid spectacle.

The story of South-West Africa before the United Nations did little to mitigate these impressions. As she was entitled, the Union of South Africa refused to submit a trusteeship agreement for South-West Africa to the United Nations. The Union did not, however, stop there. She asserted that, with the dissolution of the League of Nations, the Mandate had come to an end, and that, therefore, she had no further duties under the Mandate towards the United Nations.

Apart from repeated declarations made by representatives of the Union to the League of Nations and to the United Nations that she would continue to apply the Mandate Treaty, this plea was incompatible with the conservatory clause of Article 80 of the Charter. According to this Article, 'nothing in this Chapter (XII) shall be construed in or of itself to alter in any manner the rights whatsoever of any States or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties'.

This Article must be read together with Paragraph 1 of Article 77 which refers to 'territories now held under mandate'. It is valuable evidence to the effect that at the time when the Charter came into force and it was clear that the League would be wound up, signatories of the Charter did not intend that the mandate treaties should automatically lapse. The signatories of the Charter considered the mandate treaties still to be 'existing international instruments'.

These treaties could be terminated in one of two ways, either by the conclusion of a trusteeship treaty for any such mandate or by the grant of independence, as happened in the case of Transjordan with the approval of both the United Nations General Assembly (January 17, 1946) and of the League Assembly (April 18, 1946).

In its Advisory Opinion on the *International Status of South-West Africa* (1950) the International Court of Justice upheld this interpretation of the Charter and of the Mandate Treaty. It held further that, in accordance with the practice of the League to allow petitions from the populations of mandated territories, the right of petition had become an acquired right of the people of South-West Africa, and that such petitions were to be transmitted by the Union to the General Assembly. Finally, the Union was bound to submit to 'supervision and control of the General Assembly and to render annual reports to it'. The degree of supervision to be exercised by the General Assembly should not exceed that which applied under the League mandate and should conform as far as possible to the procedure followed in this respect by the League Council.

By a resolution adopted on December 14, 1946, the General Assembly refused to grant the request of the Union of South Africa for the incorporation of South-West Africa into the Union. The Union ignored repeated requests made by the General Assembly in three successive years to submit a trusteeship agreement for South-West Africa. She overstepped her rights, however, when she announced in 1949 that she would no longer submit annual reports to the United Nations.

On July 21, 1949, the Trusteeship Council resolved to inform the General Assembly that, owing to the Union's passive resistance, it was no longer in a position to exercise its functions regarding South-West Africa. It remains to be seen whether, in the face of the Advisory Opinion of the International Court of Justice, the Union of South Africa will continue with her policy of *de facto* annexation, and whether the members of the United Nations will allow the Union to defy her international obligations under the mandate.

The second class of potential trusteeship territories consists of the territories detached from Germany, Italy and Japan as a result of the Second World War. In the case of Germany, the only territories which were detached *de jure* (Final Protocol, March 31, 1950) from pre-1939 Germany were some small frontier districts in Western Germany, which were incorporated into The Netherlands. This cession involved the transfer of about 25,000 Germans. The re-establishment of Austria was treated as restoration of the status quo prior to Germany's aggression on that country. The *de facto* transfer of the territories east of the Oder-Neisse line to Poland and of East Prussia to the Soviet Union is provisional, pending a final settlement of Germany's future frontiers. So is the provisional establishment of the Republic of the Saar as an autonomous State behind a tight French security curtain, and in economic union with France.

Compared with these unilateral acts, the plebiscites and the Saar regime provided for in the Peace Treaty of Versailles of 1919 were models of respect for the principles of self-determination and trusteeship. Although subject to a separate system as compared with the League mandates, the Saar regime had been a conscious application of the trusteeship principle. In 1919, the detachment of the Saar from German jurisdiction was based in part on the need to guarantee complete freedom to France in working the Saar mines. These were handed over to France as compensation for the destruction by Germany of French coal mines and as part payment of reparations. The fate of the Saar was to be decided by plebiscite after fifteen years. Until then, Germany renounced the government of the Saar Basin

'in favour of the League of Nations, in the capacity of trustee' (Article 49 of the Peace Treaty of Versailles, 1919).

After 1945, such liberal inhibitions had become out of date. The victors disposed of German territories as, under their *condominium* over Germany, they might, but with scant respect for the principles of self-determination and trusteeship and for the self-denying ordinance of the United Nations Declaration of January 1, 1942.

Japan was deprived of the territories enumerated in the Cairo Declaration of 1943 and of her Pacific mandate. The Japanese territories car-marked for China and the Soviet Union were handed over without consultation of the populations concerned.

In relation to Japan, her unconditional surrender served as the legal basis of these acts and of the transformation of the Japanese mandate into a United States trust territory. In relation to the United Nations, the Allies were free agents regarding any of the Japanese territories. In the case of the Japanese mandate, the victorious powers were bound, as members of the United Nations, to administer the occupied islands subject to the restrictions of the Mandate Treaty between the League of Nations and Japan (December 17, 1920). Again they were not under any obligation to agree to the submission of these mandated territories to the trusteeship system. They did so of their own free will.

The victors had still to dispose of the Italian colonies. This was easier said than done. The Council of Foreign Ministers failed to reach agreement within the period stipulated by the Peace Treaty with Italy of 1947.² It, therefore, bequeathed this bone of contention to the General Assembly.

Under the Peace Treaty, the General Assembly had been granted authority, in the absence of agreement between the powers, to make a binding decision. In form, it was to be a recommendation. The principal Allied Powers which were parties to the Peace Treaty with Italy had, however, agreed to 'accept the recommendation and to take appropriate measures for giving effect to it'.

At its Third Session, the General Assembly decided to allow both Italy and representatives of the populations of her former colonies to participate without vote in its committee proceedings. The necessary two-thirds majority for any constructive solution could not, however, be found. The Soviet Union and India favoured direct trusteeship administration for all three Italian colonies, but differed in their proposals for Eritrea. The United Kingdom proposed British trusteeship for Cyrenaica and adjournment of the issue regarding the rest of Libya until the Fourth Assembly, division of Eritrea between

² See above, p 407 *et seq.*

Ethiopia and the Sudan, and Italian trusteeship for Somaliland. The Latin American States and Iraq made further proposals of their own. The members of the General Assembly disagreed not only on the type of trusteeship, but also over the wisdom of letting Italy participate in the trusteeship administration of any of her former colonies. The Latin American States extolled the suitability of Italy for such stewardship as much as this was deprecated by the Near Eastern members of the United Nations. Finally, the General Assembly was divided on the justice of the Ethiopian claims to the annexation of Eritrea. Efforts at unifying the proposals of the Latin American, Near Eastern and Asiatic States miserably failed. Disunity at Lake Success allowed Count Sforza to play the Italian Talleyrand. He was able to reach a private agreement with Mr. Bevin which was designed to adapt the British proposals to those of the pro-Italian *bloc* in the General Assembly. Italy was not only to become trustee for Somaliland, but also for Tripolitania until, after ten years, the General Assembly could decide on the advisability of Libya's independence. In the General Assembly, the British-Italian compromise passed the committee stage by remarkable manoeuvres, but failed to secure the necessary two-thirds majority in the plenum. It was defeated by the minority votes of the Levantine-Arab States, the Asiatic States, and those of the Soviet *bloc*. Even Sweden and Turkey declined to give their vote to the Western powers and withdrew into a dignified abstention.

In the Fourth Assembly, agreement was attained by finding a common denominator for the main *blocs* except the Soviet minority. Count Sforza realised that Italy had no chance of being appointed trustee for either Tripolitania or Eritrea. So, by proposing their immediate independence, he could achieve two objects. If this suggestion were adopted, it would prevent the grant of trusteeship over these territories to any other power and, at the same time, establish Italy as the champion of the rights of undeveloped peoples. The Soviet Union, too, realised that there was little chance of trusteeship agreements in which she would be allowed actively to participate. Thus she, too, came out in favour of Libya's immediate independence; of, as might have been expected, the withdrawal of all foreign—meaning British—troops from Libya and of the dismantling of all foreign bases. For Eritrea and Somaliland, she suggested short-term trusteeship systems through a United Nations administrator and an advisory committee, consisting primarily of the permanent members of the Security Council.

In the end, a resolution was adopted (November 21, 1949) by forty-eight votes against that of Ethiopia. The Soviet *bloc*, France,

New Zealand, Sweden and Yugoslavia abstained. It provided for the independence of Libya by January 1, 1952, at the latest. A United Nations Commissioner was to assist the people of Libya in preparing for their independence. A Council of Ten, consisting of Egypt, France, Italy, Pakistan, the United Kingdom, the United States and four Libyan representatives was to assist him. A Commission of Investigation was to ascertain still further the wishes of the people of Eritrea and the best means of promoting their welfare. At its Fifth Session, the General Assembly was to decide finally on the fate of Eritrea. Somaliland was to be put under Italian trusteeship for ten years. The trustee was to be advised by a council of three powers, Colombia, Egypt and the Philippines.

The implementation of the Resolution was quickly taken in hand. The General Assembly appointed a high Dutch officer of the United Nations Secretariat as United Nations Commissioner in Libya and a five-member commission (Burma, Guatemala, Norway, Pakistan and the Union of South Africa) for its exploratory tasks in Eritrea.

In February, 1950, the Commission reached Eritrea, conducted hearings and collected material for its report. Its presence was accompanied by riots and acts of terrorism committed by the rival pro-Ethiopian and Muslim sections of the population, one favouring the incorporation of Eritrea into Ethiopia and the other complete independence.

The Commission and the ad hoc Political Committee of the Fifth General Assembly failed to agree on solving the problem of Eritrea's future through union with Ethiopia or by the grant of independence, either immediate or after a period of trusteeship. In the end, the Political Committee and, subsequently, the General Assembly accepted a compromise, supported by the Latin American States, for federation between Ethiopia and Eritrea. This proposal went some way to meet the British desire for complete union between Ethiopia and Eritrea, while the envisaged protection of human and economic rights of the inhabitants of Eritrea satisfied Italy's Latin-American sponsors. The transfer of authority from the British administering authority to the federation is to be completed by September 15, 1952.

The special committee charged with drafting the Trusteeship Agreement for Somaliland (Dominica, France, Iraq, the Philippines, the United Kingdom and the United States) speedily set to work. As Somaliland was to be entrusted to a State with the colonial record of Fascist Italy, and a non-member of the United Nations at that, special safeguards were devised. They had been outlined in the Resolution of the General Assembly and went far beyond those of

any other trusteeship agreement.³ In January, 1950, the Trusteeship Council approved the draft with modifications. In accordance with the Resolution of the General Assembly, Italy was then invited to undertake the provisional administration of Somaliland, pending approval of the Agreement by the General Assembly. On April 1, 1950, British military administration transferred its powers to Italy.

The results achieved bear the positive and negative marks of the international aristocracy in collective action. The Western powers attained their overall objective of keeping the Soviet Union out of participation in the control of these strategically important areas. The British hold over Cyrenaica was made more precarious than was strategically safe for the West. In all likelihood, however, arrangements similar to those made with Iraq and Jordan can be made if, and when, Libya, under her King of Libya, should actually attain her 'independence'. Once the decision was made dependent on the vote of the two-thirds majority of the General Assembly, it followed that the pro-Italian sentiments of the Latin-American States, the demands of Levantine-Arab nationalism and the anti-colonial attitude of the Asiatic States should all have to be taken into account. The result was a series of compromises. Whether they will lead to good government, self-government, or neither, only the future can tell.

The third category of potential trust territories enumerated in Article 77 of the Charter was left blank. None of the members of the United Nations feels any need for placing under the trusteeship system of the United Nations any of the territories under its own administration.

In the British Commonwealth and Empire the trend is towards greater self-government within the colonial empire and ultimate transformation of self-governing colonies into members of the British Commonwealth. The path which India, Pakistan and Ceylon have gone shows the reality of this alternative to international trusteeship. To her cost, Burma was even allowed to leave the British Commonwealth and Empire.

After initial hesitation, The Netherlands, too, accepted the principle of union for her colonial empire in the East. With still less enthusiasm, and by belated half-measures, France set about transforming parts of her colonial empire into a French Union.

Little harmony exists in the goals of the colonial policies of the powers with responsibility for such areas. In a petition submitted to the United Nations by the All-Ewe Conference on behalf of the Ewe people of Togoland (August 9, 1947—U.N. Doc. T/Pet.6/5) the

³ See below, p. 678 *et seq.*

ts of British and French colonial policies are fairly

olicy, which we may call the policy of adaptation, aims colonial peoples for self-government, and for that reason, unt of indigenous culture and makes provisions for its On the other hand, French colonial policy, which we policy of assimilation, leads in an entirely different direc- icycle of assimilation aims at converting colonial peoples ip of France, and, for that reason, aims at imbuing the unity with the best that French culture can give, rather ig indigenous culture.'

ifferent colonial policy is pursued by the Soviet Union onial empire of her Asiatic hinterland. It aims at main-awakening the national consciousness of the multi-nalities of the Soviet Union and of associating them f the Soviet federation on a footing of equality. Neces-a totalitarian State, such equality amounts merely to on of all to the sway of the Communist Party and of il secret police.

al policy of the United States in her own silent colonial cted towards centralisation of colonial administration—etween the Department of the Interior, the Navy and nents and a number of other federal agencies—and sion of civil and political rights, subject to overriding s of security. Belgian, Spanish and Portuguese colonial s still conducted largely on pre-1914 lines. Some im-ave been forced on these colonial administrations by the ternational public opinion and by the example of more ghbouring colonies of other powers.

iple of Tutelage by Advanced Nations. In 1919, the of being an advanced nation meant a State which, by lards, had attained a high political, moral and economic

In fact, being a world power in possession was ualify Japan as a mandatory. If any doubt had existed iced character of any other of the mandatories, the that possession is nine points of the law would have lly in its favour.

ter of the United Nations dispenses with any formal of trustees. One or more States or the Organisation ome a trustee or, as he is described in Article 81 of the administering authority. The experiences made in the od with joint Allied administrations in Germany and

Austria⁴—and still less those of Korea⁵—did not recommend the pattern of joint trustees. Even among like-minded States such as Australia, New Zealand and the United Kingdom, it was found expedient to leave the actual administration of the mandate, and subsequently of the trust territory, of Nauru with Australia. In the case of the Free Territory of Trieste, at least on paper, a scheme was devised which was similar to a trusteeship exercised by the United Nations itself.⁶

The Principle of the Open Door. In the Covenant, the principle of the open door was still listed for the B-Mandates on a footing of equality with the other objectives of these regimes. It did not apply in the C-Mandates. In the case of A-Mandates, it was incorporated into the individual mandate treaties, but subject to the overriding interests of the populations of these mandated territories.

In the trusteeship system of the United Nations, the principle of the open door has suffered further relegation. According to Article 76 of the Charter, equality of treatment for all members of the United Nations and their nationals must not prejudice the three main objectives of the trusteeship system: the promotion of international peace and security; the advancement of the inhabitants of the trust territory and the progressive development of these territories towards self-government or independence, and finally, the encouragement of respect for human rights and fundamental freedoms and of recognition of the interdependence of the peoples of the world.

In the case of strategic areas it is arguable that the principle of the open door does not apply at all. This view was expressed by the United States representative in the Security Council. Under Article 83 of the Charter, the basic objectives of Article 76 are applicable to the 'people of each strategic area'. Conversely, it may be concluded that an objective favouring other members of the United Nations and their nationals, like the principle of the open door, does not apply to strategic areas.

According to Article 8 of the Trusteeship Agreement for the former Japanese Mandated Islands, the only agreement in existence on strategic areas, the United States is only committed to grant most-favoured-nation treatment to nationals of other members of the United Nations and, therefore, may give preferential treatment to her own nationals.

The Principle of Military Non-Exploitation. Compared with the Covenant, the emphasis in the Charter has completely changed. In

⁴ See above, p. 381 *et seq.*, and p. 400 *et seq.*

⁵ See above, p. 418 *et seq.*

⁶ See above, p. 408 *et seq.*

1919 and 1945, the draftsmen of these clauses thought in terms of the war just won. After the First World War, the fear of what might have happened, that is to say, huge black armies under German command, made the peace-makers anxious to ban the spectre of any exploitation of the mandates for such purposes. As France was highly conscious of her chronic shortage in manpower, she alone took a different attitude.

During the Second World War and after, the United Nations remembered the use which Japan had made of her mandate to assist in the preparation of aggression and they thought in terms of world coalitions against aggression which, in the interest of collective security, might utilise colonies and trust territories. In the first place, therefore, only 'peace-loving' States were to become trustees. Moreover, the furtherance of international peace and security was declared to be the first of the basic objectives of the trusteeship system. It was made the express duty of every trustee to 'ensure that the trust territory shall play its part in the maintenance of international peace and security'. For this purpose, as well as those of local defence and of maintaining internal order, every trustee may make use of 'volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard' (Article 84).

Still more was the conception of strategic areas influenced by this mode of thinking. For this reason, their supervision was not entrusted to the General Assembly but to the Security Council. The change in attitude towards the military use of trust territories was vividly symbolised by the atomic tests which, after the forcible evacuation of the native population, the United States have carried out off Enewetok Atoll since 1948.

When the General Assembly considered the individual trusteeship drafts, a difficulty arose. Article 84 of the Charter is silent on two questions. Is the trustee entitled to station any of its national forces, and to establish military, naval and air bases, in the trust territory? All the draft trusteeship agreements submitted to the General Assembly contained clauses which expressly authorised such action.

In the opinion of the Soviet Union, these clauses were only admissible in the case of strategic areas under the jurisdiction of the Security Council. The argument missed the essential point that, under the Charter, both ordinary trust territories—termed 'populated' in Commander Stassen's working paper—and strategic areas were to serve the interests of international peace and collective security. The analogies drawn to the League mandates by the Soviet delegate did not, therefore, apply. In the Charter, the presumption

is in favour of all measures in the interest of collective security and of collective and individual self-defence.

Both in 1946 and 1947, the General Assembly voted down heavily Soviet resolutions based in part on this argument for the rejection of the trusteeship agreements. In the discussions in the Trusteeship Council on the Trusteeship Agreement for Somaliland, the subject arose again.

In a more circuitous formulation, Italy was granted the same rights as the other trustees, but her exercise of some of them was made dependent on the consent of the special Advisory Council established under this agreement. Italy may maintain police forces and raise volunteer contingents in Somaliland for the maintenance of peace and good order in the Territory. After consultation with the Advisory Council, she may also 'establish installations and take all measures in the Territory', including the progressive development of Somali defence forces, which may be necessary, within the limits laid down in the Charter of the United Nations, for the defence of the Territory and for the maintenance of international peace and security' (Article 6). Considering the existence of Article 51 of the Charter, the limits referred to are as much or little circumscribed as the good faith of the Advisory Council and of the Trustee allows.

The Principle of Consultation. In contrast to the Covenant of the League of Nations, the Charter of the United Nations left the whole matter of the terms of trusteeship for each territory to be placed under the trusteeship system, including the designation of the trustee (Article 81), primarily with 'the States directly concerned' (Article 79). The General Assembly and, in the case of strategic areas, the Security Council were limited to the function of approving these arrangements (Articles 83 and 85).

It was realised at the San Francisco Conference that difficulties might arise in determining the identity of the States directly concerned. This could mean either the States with a direct legal or political interest. The issue being unsettled, it was for the General Assembly and, in the case of the strategic areas, the Security Council to settle whether the States which submitted trusteeship agreements for approval had complied with the preliminaries of Article 79 of the Charter. Every one of the potential trustees was left to find his own answer to the question.

Apart from the joint draft trusteeship agreement for Nauru, which had been agreed upon between the three members of the British Commonwealth concerned, no formal agreement between States directly concerned was submitted to the United Nations. After preliminary information or, in some cases, negotiations with States

view of the would-be trustee, were directly concerned, the trustee submitted a draft agreement to the United

approval of these agreements, the General Assembly, or Council, confirmed the interpretation given by the trustee States directly concerned'. In the case of any alteration of the terms of each of the trusteeship agreements (of the Charter), the same powers will have to be consulted

her request for the General Assembly's approval of the of South-West Africa, the Union of South Africa staged in the Mandate. Opinion differed widely on the genuine-plebiscite and on the fairness of the questions put before population of the mandated territory. These doubts led in the resolution adopted by the General Assembly on 4, 1945.

ing that, among other things, 'the African inhabitants of Africa have not yet secured political autonomy or reached political development enabling them to express a considered wish the Assembly could recognise on such an important incorporation of their territory', the General Assembly itself unable to accede to the Union's request.

ue of consultation of the population also arose over Samoa. In the inter-war period, the Mau rebellions had the peoples of the Islands of Samoa were seriously disturbed. Although not obliged to consult them, New Zealand put a trusteeship agreement to the local population. The request for a greater degree of self-government under the of New Zealand than was envisaged in the trusteeship

When, nevertheless, the agreement was approved by the Assembly in the form in which it had been submitted by and, the Samoans renewed their request to the United through a petition.

suggestion of New Zealand herself, the Trusteeship set up a powerful commission of inquiry, headed by Mr. Sayre, of the Council, to Samoa. In full co-operation with the Government of New Zealand, the Commission made a number of recommendations for further self-government in Samoa in its Report to the Trusteeship Council (September 12, 1947). Without delay, in the spirit of complete co-operation, the Government of New Zealand undertook to work to implement this programme.

case of the Italian colonies, too, the local populations were beyond anything that they could expect under the Charter

of the United Nations. The Peace Treaty with Italy of 1947 (Annex 11) provided that 'the final disposal of the territories concerned and the appropriate adjustment of their boundaries shall be made by the Four Powers in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of other interested Governments'.

The Four-Power Commission of Investigation largely agreed to disagree on its findings. Two negative points, however, emerged. In all of the former Italian colonies, the majority of the native population resented the very idea of Italy being entrusted with their administration in any form. Moreover, much as the populations might desire independence, in none of these colonies, with the possible exception of Cyrenaica, were they ready for it.

Once the General Assembly had committed itself to the principle of Libya's independence, it was only consistent that the form of government and the constitution for Libya should be 'determined by representatives of the inhabitants of Cyrenaica, Tripolitania and the Fezzan, meeting and consulting together in a National Assembly'. It followed, too, that the functions of the United Nations Commissioner and of the special Council should be merely advisory.

The United Nations Commission for Eritrea was expressly enjoined in the first place to take into account 'the wishes and welfare of the inhabitants of Eritrea, including the views of the various racial, religious and political groups of the provinces of the territory and the capacity of the people for self-determination'. The interests of peace and security in East Africa, and the claims of Ethiopia were to be the two other major factors to be considered by the Commission.

In view of the known opposition of the people of Somaliland to Italian trusteeship, no attempt was made in this case to consult the local population on their wishes regarding the selection of the trustee. In exchange, Paragraph 1 of the draft constitution, proposed by India and appended to the Resolution of the General Assembly for the guidance of the draftsmen of the Trusteeship Agreement, was exceedingly progressive from a long-range point of view.

In the period of the League mandates, the question where the residuary sovereignty in the mandates rested had been vehemently debated. Probably, the best view was that the League of Nations was the sovereign of the mandated territories. Similarly, much is to be said for the opinion that ultimate sovereignty in the trust territories rests with the United Nations. It has, however, been suggested that residuary sovereignty rests with the peoples of the mandated territories. Regarding trust territories, there is still less evidence for this doctrine than had existed with regard to the League mandates.

of this particular trusteeship agreement the doctrine of the sovereignty of the local population is less artificial than if it were applied to mandates or trust territories; for, in this case, the General Assembly had already decided that, after ten years, the territory would become an 'independent sovereign State'. The cumulative effect of these two synonymous adjectives makes the promise doubly sure.

In accordance with the Indian proposal, it is stipulated in Article 1 of the Declaration of Constitutional Principles, appended to the Trusteeship Agreement for Somaliland that 'the sovereignty of the Territory and its people and shall be exercised by the Administering Authority on their behalf and in the manner prescribed herein by the Trusteeship Agreement of the United Nations'.

Goal of Ultimate Independence or Self-Government. In the Trusteeship Agreement, a difference exists between the ultimate ends of the trusteeship systems. In 1945, however, the statesmen of the United Nations were less enthusiastic than their predecessors about independence as a desirable goal. During the inter-war period, the international aristocracy had already become unduly suspicious of nominal independence counted for less than ever. At the San Francisco Conference, it was thought wise, therefore, to state that the trustees should guide the inhabitants of their trust territories towards self-government or independence as may be determined by the particular circumstances of each territory and its people and in accordance with the freely expressed wishes of the peoples concerned, provided by the terms of each trusteeship agreement.

It is not to be emphasised the merely relative value of independence, but the fact of 'recognition of the interdependence of the peoples' was included in the basic objectives of the trusteeship systems. In the debates in the General Assembly preceding the Trusteeship Agreements, attempts were made in the individual trusteeship agreements, attempts were made to state the terms 'self-government' and 'independence'. However, the Trusteeship Agreement, did not take kindly to these suggestions, and they were not pressed.

The Trusteeship Agreement which deals expressly with its application to the United States Trusteeship Agreement for the Trust Territories of the Pacific Islands. It stipulates the requirement of the trustee. By implication, the position is the same in all other trusteeship agreements. The termination of any trusteeship agreement involves its alteration or amendment. In the Trusteeship Agreement, therefore, it requires agreement between the States directly concerned (Article 79). One of these is certainly the trustee. In

addition, the General Assembly, or the Security Council, would have to approve such an agreement or, in the case of a unilateral termination of his functions by the trustee, decide on the future of the territory.

If termination were to be distinguished from alterations and amendments on the ground that these leave—though not necessarily—the basic principles of such a treaty intact, it follows *a fortiori* that any step which would put an end to the status of any particular trust territory presupposes agreement between the States directly concerned.

In any case, the necessity of obtaining the trustee's consent to the termination of his trust follows from the general principles of international law. Unless there are special reasons of impossibility of performance or breach of treaty, an international treaty can only be terminated with the consent of the parties, in these cases the United Nations and the trustee.

The trust territory of Somaliland is again in a category of its own. It is subject merely to a temporary trust and after ten years shall become an independent sovereign State'. The Trusteeship Agreement then automatically ceases to be in force (Article 24). The goal having been clearly fixed, the agreement is more specific than its predecessors on the ways in which this object is to be attained.

It is the duty of the Administering Authority to 'foster the development of free political institutions and promote the development of the inhabitants of the Territory towards independence' and to make provision for increasing participation of the inhabitants in the various organs of government. At least eighteen months before the expiration of the Trusteeship Agreement, Italy will have to submit to the Trusteeship Council a plan for the 'orderly transfer of all the functions of government to a duly constituted independent Government of the Territory' (Article 25).

The Principle of International Supervision. On the surface, the machinery of international control of trustees under the Charter is more imposing than under the Covenant of the League of Nations. Like the Economic and Social Council, the Trusteeship Council is in form a principal organ of the United Nations. In fact, however, it is an advisory commission under the authority of the General Assembly. For the strategic areas, it is an auxiliary body of the Security Council, although it remains under the control of the General Assembly.

The chief differences between the Trusteeship Council and the Permanent Mandates Commission are two. The members of the Trusteeship Council are not independent experts, but government

delegates, and the States administering trust territories are not in a minority as they were in the Permanent Mandates Commission. The number of members is equally divided between the two categories (Article 86 of the Charter).

It is a matter of judgment whether these differences strengthen or weaken the Trusteeship Council. The current argument in favour of government delegates is that they can speak with greater authority than independent experts. An argument more to the point would be that independent experts have become a somewhat rare species and, more often than not, are either only government agents in disguise or tend to be more Popish than the Pope.

The powers of the Trusteeship Council are more impressively set out in the Charter than were those of the Permanent Mandates Commission in the Covenant. The questionnaires sent by the Trusteeship Council to the trustees have become longer, and the examination of their reports is more detailed.

The right, which the Trusteeship Council possesses, to accept and examine petitions was not expressly granted by the Covenant to the Permanent Mandates Commission but, with the approval of the League Council, the Mandates Commission developed a similar practice to that laid down in the Charter and in the Rules of Procedure of the Trusteeship Council.

If the Mandates Commission had wanted to make periodic visits to the mandated areas—a suggestion which it considered but rejected—it might have met with opposition in the League Council. The right to make such visits is the most noticeable extension of international supervision in this field (Article 87 of the Charter).

The visit of the Trusteeship Council's field mission to Tanganyika and Ruanda-Urundi in 1948 and the mission's report were not taken with good grace in the United Kingdom. In the view of a detached American observer, this sensitiveness was due in part to the vulnerability of the Labour Government at home to attacks on its groundnuts scheme in East Africa. The Government defended itself, therefore, 'by following in other colonial matters a line scarcely distinguishable from that of the Conservatives' (Miss Annette Baker Fox, *The United Nations and Colonial Development—4 International Organisation*, 1950).

In the light of the general colonial policy pursued by the Labour Government—as distinct from Mr. Attlee's and Sir Stafford Cripps' more personal policies regarding India, Burma and Ceylon—this comment has the air of intelligent guesswork. Unverifiable as this statement is, it is merely offered as food for thought.

By 1949, officialdom in the British Colonial Office had accustomed

itself to this novelty, and the visit of the mission to West Africa was received with greater composure.

At the Session of the Trusteeship Council of June, 1949, the trustees in the Pacific, especially the United States, took the initiative in asking for a visiting mission to their trust territories in 1950. As Miss Baker Fox rightly points out, the chief value of such missions is not the advice which they can offer to a trustee with the colonial record of the United Kingdom. It is to 'keep the administering authority's attention focused on an area that otherwise can easily be forgotten in the press of more momentous problems'.

The publicity effect of international supervision under the United Nations is increased by two further devices. Unlike the Permanent Mandates Commission, the Trusteeship Council meets in principle in public. Moreover, whereas in the League ultimate responsibility rested with the Council, the General Assembly is the final organ of supervision for the non-strategic trust territories. This change again ensures the maximum of limelight that the United Nations can offer. Even the Security Council, which exercises the functions of the United Nations regarding strategic areas, normally meets in public.

In Somaliland, international supervision starts on the level of day-to-day administration. The Advisory Council, composed of representatives of Colombia, Egypt and the Philippines, has its headquarters in the trust territory at the same place as the Italian Administrator. Its members enjoy full diplomatic privileges and immunities. The duties of the Council are to aid and advise the trustee. In defence matters, the trustee must not act without prior consultation with the Council.

As Italy is not a member of the United Nations, she cannot be a member of the Trusteeship Council, and her obligations to the General Assembly and to the Trusteeship Council are set out in the Trusteeship Agreement in greater detail than would be necessary in the case of a member State. The States represented on the Advisory Council, if they are not members of the Trusteeship Council, may participate without vote in the debates of the Trusteeship Council on any question specifically relating to Somaliland. For the rest, Italy is subject to the same supervision by the United Nations as the other trustees of non-strategic areas.

All supervisory functions regarding the strategic areas are left to the Security Council. Subject to the provisions of individual trusteeship agreements and without prejudice to security considerations the Security Council is, however, bound to avail itself of the assistance of the Trusteeship Council in political, economic, social

and educational matters relating to strategic areas (Article 83 of the Charter).

According to the Trusteeship Agreement for the former Japanese Mandated Islands, so far the only existing trusteeship agreement regarding strategic areas, the Security Council and the Trusteeship Council may exercise all the normal functions of supervision (Articles 87 and 88 of the Charter). There is only the reservation that the trustee may limit or exclude the application of these provisions in 'any areas which may from time to time be specified by it as closed for security reasons'. Thus, it is in the discretion of the United States whether, at any time, they care to exclude international supervision of these Pacific Islands altogether on security grounds. According to General Marshall's testimony as Secretary of State before the Senate Foreign Relations Committee (July 7, 1947), 'we must observe forms, but we have provisions in the agreement which allow us almost complete liberty of action'.

In case of disagreement between any of these organs of the United Nations and a trustee regarding the interpretation or application of a trusteeship agreement, the issue arises how international supervision can be made effective. At this stage, the auxiliary character of the Trusteeship Council reveals itself. All it can do is to report back to the General Assembly or to the Security Council. Under the Charter, the General Assembly may make recommendations, but no decisions. The Security Council may make decisions which members are bound to carry out, but it can do so only under Chapter Seven of the Charter. Both the General Assembly and the Security Council may ask the International Court of Justice for an advisory opinion, but only on legal questions.

Any more far-reaching competences can be derived only from the individual trusteeship agreements. The obligations undertaken in this respect by the trustees are extremely vague. Under some of the trusteeship agreements, the trustees have promised to collaborate fully with the United Nations in the discharge of their duties and to carry out the recommendations of the appropriate organs of the United Nations which may be appropriate to the particular circumstances of a trust territory and which would be conducive to the achievement of the basic objectives of the trusteeship system. In the Trusteeship Agreement for Western Samoa this duty is expressly limited to recommendations which are, 'in the opinion of the Administering Authority', appropriate to the needs of the Trust Territory and conducive to the attainment of the purposes of the trusteeship system.

Under some of the trusteeship agreements, either the trustee or individual members of the United Nations may bring before the International Court of Justice any dispute between them relating to the interpretation and application of individual trusteeship agreements. No such arbitration clause is, however, contained in the trusteeship agreements for Nauru, New Guinea and the former Japanese Mandated Islands.

Thus, unless a trustee breaks his treaty obligations, the United Nations has no effective legal means of enforcing its authority against an unwilling trustee. The system is based on the assumption of voluntary co-operation, on the power of public opinion and mutual goodwill in the achievement of common objectives.

In the extreme case of persistent breach of trust obligations, the residuary powers of the United Nations as the sovereign of the trust territories can be brought into play. Any new trustee, however, would have to contemplate how best to oust his predecessor from possession. The undisturbed continuance of Japan in her mandated territories in spite of all her breaches of the Covenant and of her obligations under her Mandate Treaty is not an encouraging analogy.

In a joint statement by the Delegation of the United Kingdom and the United States (Annex C to the Report of the Rapporteur of Committee II/4 of the San Francisco Conference, June 20, 1945) the eventuality of a trustee's refusal to consent voluntarily to the transfer of the trust was discussed. In the view of the two powers, such a hypothetical situation could only be judged by the General Assembly and the Security Council 'on its merits in the light of all the circumstances prevailing at the time. It is impossible to make provision in advance for such a situation'.

In all its essentials, the trusteeship system of the United Nations is a child of the same spirit as the mandates regime of the League of Nations. If anything, the changes in emphasis from separate to joint administration of trust territories and neighbouring areas, from military non-exploitation to military integration, and from independence as the goal to self-government, with the emphasis on international interdependence, have established trustees more firmly in the trust territories than the mandatories had been in the mandated territories.

As the majority principle applies in the Trusteeship Council, the East-West rift has not seriously interfered with the work of the Council. The publicity of its meetings—in contrast to the privacy of those of the Permanent Mandates Commission—offers, however,

opportunities to the Soviet Union for platform speeches which her representative has not let go by default. In spite of the dangers of abuse, such publicity is, on the whole, much to be desired. It acts as a spur to willing but, otherwise, possibly too complacent trustees and it has a deterrent effect on potential defaulters.

THE EXPANDING CONCEPTION OF TRUSTEESHIP

It is historically correct to emphasise the exceptional character of the mandates and trusteeship systems and to link them, as has been done most consistently by Mr. Duncan Hall (*Mandates, Dependencies and Trusteeship*, 1948), with other similar makeshift arrangements on the international frontier, the 'zones where great-power interests come together in conflict'. This, certainly, was General Smuts' conception of the mandate, and devices such as international protectorates or neutralised buffer States have frequently fulfilled the function of eliminating such potential or actual sources of conflict between the greater powers. It is more dubious whether this was what President Wilson understood by mandates. In any case, the 'geographical morality' of the peace-makers of 1919 defeated itself in the years that followed.

Although barely committed on the international level with regard to their own colonies, public opinion at home, in countries less directly concerned, and in the colonies gently pushed colonial powers everywhere to the acceptance of the principle of colonial trusteeship. At this stage, the difference between colonies and mandates tended to become one of degree. In both, the task was the same. All that was lacking in colonies, was external supervision of the trustees. From being an institution of the international frontier, the idea of colonial trusteeship changed into a universally valid standard of perfection.

In the post-1945 period, the two conceptions of trusteeship—phenomenon of the international frontier and universal standard of colonial government—have merged. The international frontier now runs through all the colonial empires of the non-Soviet world. Since the Soviet and Western worlds have become the antipodes in the present system of world power politics in disguise, trusteeship is the most effective safeguard against the potential alignment everywhere of revolutionary colonial nationalism with Communism. For all practical purposes, in this field alignment with Communism means alignment with the Soviet Union.

In a world divided between two contending groups of powers and ideologies, the international frontier lies inside any country which is not immune to such attack from within. Thus, it is not surprising

that, at the San Francisco Conference, the colonial powers showed much greater willingness than in 1915 to undertake constitutional obligations regarding the discharge of their international trusts in all their dependencies.

On the initiative of Australia and the United Kingdom, a whole Chapter (XI) on colonial policy was inserted into the Charter. Members in charge of non-self-governing territories recognised the principle that 'the interests of the inhabitants of these territories are paramount'. They accepted as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories'.

They have specifically undertaken to ensure the advancement of colonial peoples in every respect by constructive measures, their just treatment, and their protection against abuses. They have promised to develop self-government, to take due account of the political aspirations of the colonial peoples, and to assist them in the progressive development of their free political institutions, but 'according to the particular circumstances of each territory and its peoples and their varying stages of advancement'. This formula covers a compromise which took the teeth out of the original Chinese proposal to lay down self-government and independence as the universal goals of colonial policy.

Moreover, the colonial powers are to apply in their colonial policies, 'no less than in respect of their metropolitan areas,' the principle of social and economic good-neighbourliness. Subject to limitations of security and of a constitutional character, they have undertaken to transmit regularly to the Secretary-General of the United Nations 'for information purposes' statistical and other information of a 'technical nature relating to economic, social, and educational conditions' in non-self-governing territories (Articles 73 and 74).

The curious heading of Chapter XI of the Charter—'Declaration regarding Non-Self-Governing Territories'—was meant to convey the fact that the obligations undertaken by the colonial powers were merely a restatement of generally accepted practice. Possibly, too, it was to imply that such a declaration was in a somewhat different category from the other obligations undertaken by members in the Charter. If this was the intention, then such a mental reservation may safely be ignored. Once such a declaration is incorporated into a treaty, it stands on the same footing as the rest of the obligations which the contracting parties have undertaken.

The history of Chapter XI in the practice of the United Nations

confirms the experience that the whole colonial hinterland of the Western Powers has since 1945 become engulfed in the international frontier zone. Colonial powers have to beware not only of the Soviet *bloc*, but also of former colonial dependencies with a strong anti-imperialist tradition in the Near East and Asia. Lastly there is always American uneasiness towards public opinion at home which remains blissfully ignorant of the United States colonial empire and is still nurtured in the anti-colonial traditions of the War of Independence.

The first difficulty which arose was to determine the scope of Chapter XI of the Charter. Read by itself, it might apply to the whole metropolitan areas of any non-democratic member of the United Nations; for such members 'have . . . responsibilities for the administration of territories where peoples have not yet attained a full measure of self-government'. In the atmosphere of goodwill to the Soviet Union which permeated the San Francisco Conference, this interpretation would certainly not have been in accordance with the intentions of the founders of the United Nations.

In Commander Stassen's working paper which was the basis of the whole work of Committee II/4 of the San Francisco Conference, the future Chapter XI of the Charter was headed 'General Policy'. It was to apply to territories 'inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world'.

This phrase was literally borrowed from Article 22 of the League Covenant and was replaced by the ultimate wording on merely formal grounds. As emerges from the Report of June 20, 1945, of the Committee's Rapporteur to Commission II, the reason was to 'find new language more suitable to existing conditions than the language employed in Paragraph 1 of Article 22 of the Covenant of the League of Nations'. Thus, the term is not limited to colonies in the narrow sense. By non-self-governing territories must be understood any territories of a type similar to the non-Turkish parts of the Ottoman Empire and the former German colonies in 1919. It may apply to portions of unitary and federal and to national and multi-national States, provided that, in comparison with the metropolitan area, such territories enjoy less self-government.

In order to determine the category of territories to which Chapter XI of the Charter applies, the standard of relative political discrimination must be applied. The subject was discussed in a sub-committee of the Fourth Committee of the First General Assembly. It was thought wise, however, not to insist on any formal definition.

The propagandist potentialities of clause (e) of Article 73 of the Charter were exploited to the full by the Soviet Union and the anti-colonial *bloc* of Near-Eastern and Asiatic States. Actually, colonial powers are only obliged to submit to the United Nations 'technical', as distinct from political, information on economic, social and educational conditions in non-self-governing territories. In beautifully tautologous language, Article 73 provides that such information is to be transmitted 'for information purposes'.

At its Second Session (November 3, 1947), the General Assembly recognised that members were not under any obligation to submit political information, but noted with benign approval that some members had voluntarily transmitted information on the development of self-governing institutions in non-self-governing territories, and the General Assembly encouraged others to follow their good example.

As early as its First Session (December 14, 1946), the General Assembly had requested the Secretary-General to convene, some weeks before the opening of the Second Session, an ad hoc Committee composed in equal number of representatives of members transmitting information under Article 73 (e) and of representatives of members elected by the General Assembly on the basis of an 'equitable geographical distribution'.

The analogy to the Trusteeship Council was unmistakable. In the following Session, the ad hoc Committee became a Special Committee on a quasi-permanent basis. Attempts were made in it to carry the assimilation of non-self-governing territories to trust territories still further by means of visits by United Nations missions and by granting their inhabitants the right of petition to the United Nations. Both were defeated.

The frontal attack against the colonial powers was launched by India at the Second Session of the General Assembly. The Indian delegation proposed the extension of the trusteeship system to 'all or some' of their non-self-governing territories. On November 1, 1947, the General Assembly rejected the draft resolution by twenty-four votes to twenty-four with one abstention. Even if the Resolution had obtained the required two-thirds majority, it would have amounted merely to an empty recommendation.

The right of the Assembly to discuss information received from colonial powers regarding non-self-governing territories and to pass resolutions on this subject can be based on the powers of the General Assembly under Articles 10 and 13 of the Charter. The only question is whether such activities constitute intervention in matters which are

essentially within the domestic jurisdiction of any State and, thus, constitute a breach of the principle laid down in Paragraph 7 of Article 2 of the Charter.

If the intentions of the Contracting Parties at the time of the conclusion of the treaty are decisive—as they must be for any legal interpretation—the answer would probably be in the affirmative.⁷ As on other occasions, however, the General Assembly has shown a sovereign contempt for this limitation of its powers.⁸ It is only matched by its lack of capacity to act. Thus, this town-meeting of the world tends to suffer from the same deficiencies as sham representations in some of the non-self-governing territories: a marked trend to irresponsibility. Perhaps increased information—on a strictly voluntary basis—from colonial powers on this aspect of their experiences will help the General Assembly to recover a sense of proportion and will make it aware of the uses to which its enthusiasm for colonial progress is being put.

The resentment caused by these Resolutions of the General Assembly—and subsequent resolutions in a similar vein adopted at its Fourth Session in 1949—even in a United-Nations-minded country such as the United Kingdom has a number of causes. In the first place, only nine of the fifty-nine members of the General Assembly are directly affected by such exercises in anti-colonialism. The greater majority of members vote on topics which, they know, do not affect themselves. As on other issues, the motives which influence such votes are matters of speculation.

In this particular instance, Mr. Ernest Davies, the British speaker at the meeting of the General Assembly on November 3, 1947, was not prepared to give the 'honourable delegates', as he called them, the benefit of the doubt:

'As was pointed out this morning by the representative of New Zealand, votes cast in this General Assembly are not always cast according to the conscience, shall we say, of those casting them, but rather upon the instructions of their governments. We all know that votes are not always cast solely in relation to the merits of the particular question under discussion. They may be affected by all sorts of diplomatic and political considerations which have no bearing whatsoever on the well-being of colonial peoples.'

Moreover, members of autocratic or in other respects backward countries assume an air of concern for the colonial populations of other countries which, by comparison, may enjoy enviably high standards of political, social and economic freedom and advancement. At the same time, the very same governments which show such

⁷ See above, p. 447 *et seq.*

⁸ See, for instance, above, p. 640.

studied unconcern over intervention with the domestic affairs of colonial powers are the first to deprecate any international concern with their own metropolitan area as unwarranted interference with their own independence. Such hypocrisy is hard to bear with a show of equanimity.

In the words of Mr. Poynton, the British representative in the Fourth Committee of the Second General Assembly (October 3, 1947), 'We can interpret the Charter according to the letter or we can interpret it according to the spirit; but all nations members of the Organisation must follow the same rules. We cannot have the "spirit" for the responsible States (in non-self-governing territories) and "the letter" for those without responsibilities.'

The artificial division, which the Charter sanctions, between non-self-governing territories which fall, and others which do not fall, under Chapter XI of the Charter encourages what Mr. Poynton aptly called in the same speech the salt-water fallacy: 'By this I mean the fallacy that whereas expansion by a country over *land*, and the incorporation of large areas of territory inhabited by other races and peoples, is apparently perfectly praiseworthy, the extension of one's jurisdiction over *sea* is stigmatised in certain quarters as "colonial imperialism", "oppression of subject races" and so forth.'

Finally, the colonial powers resent being tricked into an indefinite extension of obligations which they have voluntarily undertaken. At San Francisco, it had been agreed that information to be transmitted to the United Nations should exclude political topics. The General Assembly declared the transmission of political information to be entirely in the spirit of the Charter and, by implication, pushed those colonial powers which stood by the Charter into the position of insisting on its letter.

Under the Charter, such material was to be sent to the Secretary-General for purposes of information. The General Assembly proceeded first to the establishment of an ad hoc, and then of a special, committee with all the trappings of a quasi-Trusteeship Council. It then set out to analyse this material and to make recommendations on specific matters of administration. Under the Charter, the extension of the trusteeship system to the non-self-governing territories of member States was to be in the discretion of such members. But the General Assembly did its best to prompt the colonial powers along this path. As Mr. Creech-Jones put the matter in the Fourth Committee of the Second Assembly (October 13, 1947), the anti-colonial bloc did its best to 'rewrite the Charter by Assembly Resolution'.

Development in the international field may come about by *con-sensu force*. Sly manoeuvres, such as those practised by the General

the colonial field, cannot achieve any results other than ill feeling. Moreover, if States must fear that their commitments are subject to a somewhat elastic and construction, such experiences generally have a check on the further development of international

however, is certain. The policies of the anti-colonial the Eastern bloc in the General Assembly and in the Council make it unlikely that Western colonial powers consent to the extension of the trusteeship system of the States to their own colonies. The Eastern States have and only to gain on the propaganda front by raising their voice at every stage than would be even in the interest of the populations themselves.

The Government of the United Kingdom decided to adopt a negative attitude towards supplying information on its activities within the limits laid down in the Charter. Thus, in future, propaganda will be met by Western counter-propaganda. The policy is to be limited to letting facts speak for themselves, and to the good, for compared with the lot of the population of the Eastern serf-States, that of the population of the most advanced colony is highly enviable.

The policy of the Italian colonies has proved,⁹ the fear of a Asiatic and anti-colonial bloc has induced the Western powers to solutions which, on their merits, are highly commendable. Yet, real progress can only be expected where it can be based on extraneous considerations of world strategy. In the future, the United Nations is the last place of which this

time, the nations of the British Commonwealth have these constructive tasks. Successive British Colonial and Welfare Acts, the Colonial Development Corporation, the Territorial Organisation in East Africa (Col. 191—1946), the Mediterranean Commission (Cmd. 6972—1946), and the South Pacific Commission, established by the States administering non-self-governing territories in the South Pacific (Cmd. 7104—1947), are evidence of a growing sense of responsibility and an urge to atone for past sins, chiefly of omission. A reservation must be added.

Such conferences, such as the Colombo Conference of Asian Ministers of 1950, or blue prints for mutual aid like

the Colombo Plan, are not substitutes for deeds. They can only be judged by their results. These constructive efforts are, however, a sure indication that the trusteeship system of the United Nations is not the only road to colonial self-government.

For non-self-governing territories of advanced colonial empires, the imposition of this regime on any of their dependencies might well prove to be a retrograde step. The most that can be said for the trusteeship system of the United Nations is that its existence has a nuisance-value. It acts as a stimulus to independent action, produces standards of comparison and concentrates attention on the backdoors of the West. They cannot be barred by armed force alone.

CHAPTER 32

THE PHENOMENON OF POWER POLITICS IN DISGUISE

'We have to face many dangers, and I am not at all sure that the greatest is not one we have suffered from frequently—which is to say "Let's pretend".' Mr. Menzies (July 18, 1950).

THE war aims of the Second World War are forgotten. The peace aims of the United Nations recede into a dim and distant future. Psychologically—or, should we say, psychopathically?—the world has entered a pre-war era. Friends and enemies are chosen with eyes on a world war which nobody in his senses can want, but towards which the powers are unmistakably drifting.

In all but name, Eastern Germany has an army again and is busily engaged in building up additional para-military formations. Western Germans have either learned too well the lessons of 're-education to democracy' or are too consciously aware of the bargaining card which coy refusal of temptation constitutes. They show remarkable restraint in shouldering the 'natural duties of self-defence' which, in the opinion of some of their former enemies, they should face in a true sense of democratic responsibility.

The gradual, but persistent, expansion of the Japanese police is the first stage on the road towards the reinstitution of the Japanese army. General MacArthur felt himself justified in outlining the ultimate objective (*The Times*, August 19, 1950): 'Should the course of world events require that all mankind stand to arms in defence of human liberty and Japan came within the orbit of immediate threatened attack, then the Japanese, too, should mount the maximum of defensive power which their resources will permit.' Italy is already armed to the maximum limits of the Peace Treaty of 1947 and forms part of the Western defensive system under the North Atlantic Treaty. On the opposite side of the fence, the armies of the Balkan satellites of the former Axis Powers are fully integrated into the Soviet military machine and are instructed by Red Army officers in the gentle arts of peace.

If Erasmus had lived to witness this strange spectacle, it would have confirmed him in his conviction that, 'indeed, the whole proceedings of the world are but one continued scene of folly' (*In Praise*

of *Folly*, 1508). In an age that, in sophistication at least, surpasses the Renaissance, such directness of language may be suspect. None the less, deep down, we know that this is a public understatement for the collective madness of world power politics. When we witness the victors of the Second World War drawing back and further apart and being busily engaged in wooing their defeated enemies, the question necessarily arises: Have the United Nations fought the Second World War in vain?

Had they refused the challenge of the Axis aggressors, mechanised barbarism would reign today from the British Isles to those of Japan, and from the North Cape to the Cape of Good Hope. More likely than not, totalitarianism would, in the end, also have engulfed the Western Hemisphere. Victory in the Second World War has given a breathing space to the non-Soviet world, but not much more than this. The interlude has, however, been bought at a fearful price.

By the alliance between the Western powers and the Soviet Union, another totalitarian State has been allowed to become the strongest but one world power and the centre of a *bloc* which extends from the Elbe to China. Every one of the countries from the Channel to the Near, Middle and Far East is under threat of the fate which befell Southern Korea. The peoples of every one of these countries along the world frontier know that, for the time being, the best that they can expect is to become battle-zones, and the worst that they may have to face is to have to wait for 'liberation' in the course of a Third World War.

The peoples of Europe, who have suffered Nazism and Fascism in time of peace or during wartime occupation, know from experience what loss of personal freedom and a police regime mean. Yet even some of these nations—France and Italy—are divided among themselves and have strong Communist Parties of unswerving fidelity to the Cominform. In the Near, Middle and Far East the situation is more complicated. Here Communism has a definite attraction for millions of illiterate, underfed and land-hungry peoples. In these countries, the Soviet Union can rely on the appeal of an ideology which blends well with immediate economic needs, anti-Western colonial nationalism and resentment against past, but not forgotten, racial discrimination.

THE REALITY OF WORLD POLITICS IN THE POST-1945 WORLD

Until 1945, the statesmen of the Western democracies may have indulged the illusion that, at the very least, it would be possible for

the two worlds to live side by side in a spirit of mutual toleration. If this faith was built on the experiences of an all too precarious wartime unity between the Big Three, it was contrary to all the experiences of history to expect that such negative unity would survive for long in any post-war period. It ignored the dynamism of Communism and the teleology of the Leninist brand of Marxism. Although sufficiently elastic to allow for temporary compromises between communist and capitalist States, the ultimate clash between the two worlds is an essential article of this pseudo-religion. By itself, such an ideology need not be taken too tragically. It happens, however, to fit into the reality of present-day world politics.

The acceleration of the compression of the international oligarchy is the most powerful trend in contemporary world affairs. In every inter-war period of the past the greater powers tended to combine against the strongest in their midst whom they suspected of hegemonial designs. In our time, two such agglomerations of power exist. Rightly or wrongly, each of them is deeply suspicious of the other harbouring plans for world domination. Whatever step one or the other may take, interpretation of motives must always remain largely unverifiable. In a society nexus, it is congenial to put the worst interpretation on any act of a potential enemy. In this respect, neither the Soviet Union nor the United States, nor their respective camp-followers, have much reason to reproach each other for unjustified lack of confidence. Even in terms of power politics, a decisive difference exists, however, between our present era and preceding epochs. Greater powers—as distinct from the two giant powers—with freedom of choice no longer exist.

From a short-range point of view, the only power which, potentially, might have taken a course other than lining up with one of the super-powers was the British Commonwealth and Empire. Disregarding all other reasons, which would probably have made it impossible for the British Commonwealth ever to side against the United States in the post-1945 period, such a choice would have been open only to the United Kingdom. It would have meant the end of the British Commonwealth and the reduction of the United Kingdom to the status of a middle power comparable with that of France. The alternative left was that of a junior partner of the United States.

From a long-range point of view, Communist China may still prove to be more than a mere satellite of the Soviet Union. These potentialities are only of interest if the present inter-war period should last for any length of time. China's real need is for large-scale industrialisation. Even if the Western world wanted to supply Communist China with the necessary equipment—a policy which

might merely lead to the rearmament of a potential enemy—it could not implement such a policy at the present stage of its own rearmament. The Soviet Union, too, and for similar reasons, is likely to go slow in loosening by such assistance her hold over her Chinese comrades. Thus, neither side has much to offer to China.

In such a situation, ideological affinities and memories of enmities of the past count. The only safe assumption is to take the words of the Chinese Communist leaders at their face value. They leave little doubt that they have opted for Moscow. In this connection, it is advisable to remember that, after the conclusion of the German-Soviet Non-Aggression Pact, when even most of the Communist Parties of the world were shocked at this deal, Mao Tse-tung was one of the first to toe the Moscow line. In an interview granted in September, 1939, he justified this act on the ground that the Pact had 'raised the international significance of the Soviet Union' (D. J. Dallin, *The Big Three*, 1946).

It is no longer necessary to rely on such indirect evidence. Acts speak louder than words. Whether the ultimate intentions of the Communist rulers are defensive or expansionist, the action taken by them in Tibet and Korea is unequivocal. Even if, in the relations between Manchu China and Tibet, the status of Tibet was never more than that of an autonomous part of China, Tibet had acquired since 1911 *de facto* independence, and the British Empire—and subsequently, India and the United Kingdom—recognised at the most a loose form of suzerainty of China over Tibet. Under Chiang Kai-shek, China acquiesced in this situation. Thus, the relations between China and Tibet became those between independent States or, at the most, China could claim a formal suzerainty over Tibet.

Whichever interpretation should be preferred, these relations are governed by international—and not Chinese municipal—law. If Communist China is to be eligible for recognition as the successor of the Chiang Kai-shek regime in the United Nations, she must abide by the principles of the Charter. The procrastination of Communist China over the offers made by the government of Tibet to discuss their mutual relations, and the invasion of Tibet at a time when the Tibetan delegation was actually on its way to Peking, hardly imply the peace-loving character of Communist China.

The Chinese Communist Government showed its hand still more openly over Korea. Nobody denies the legitimate interests of China in the border region between China and Northern Korea. Yet to support the aggressors actively by the dispatch of several armies across the frontier is not so different from the acts of Japanese aggression of which, in the past, China herself had been the victim.

Opportunist desires to play down the significance of Chinese intervention in Korea cannot alter Mr. Acheson's verdict (address on 'The Strategy of Freedom', November 29, 1950) that it was an 'act of brazen aggression'.

In a bipolarised world, middle powers and small States are confronted with the same choice which the British Commonwealth and Empire and China had to make. Some of them, like India or Sweden, may attempt to sit on the fence. Others, like Switzerland, have become so insignificant that neither camp is very much concerned about their policies. If, however, countries happen to occupy strategic key positions, like Greece or Czechoslovakia, then they cannot hope to keep out of the vortex of world power politics. In some cases, geography may settle the issue. Latin American States are no more free to become Soviet satellites than Russia's neighbours are free to become 'marshallised'. On world issues, foreign policy is increasingly determined in Moscow and Washington. While the one sends instructions, the other tenders advice. Both, however, mean to be obeyed. In techniques and manners the two super-powers differ.

The Soviet Union is not sufficiently sure of her satellites in Europe to rely on their willing co-operation. In addition, therefore, to close co-ordination through the centralised hierarchy of the Cominform, military and economic supervision of the Eastern European States assures their unquestioning compliance with Soviet directives. Even mild opposition to Soviet pressure is treated as the unforgivable sin. The trial and hanging of Kostov, the former Secretary-General of the Bulgarian Communist Party, and the widespread purges in Communist higher ranks all over Eastern Europe or the crime of Titoism are telling evidence of Soviet anxiety.

For the time being, subtler methods are applied in the relations between the Soviet Union and China. Yet, even there, Russian penetration of Sinkiang continues with unabated vigour. Half of the profits and production of the joint Sino-Soviet Company go to the Soviet Union, and the credit of 300 million dollars promised by the Soviet Union to China under the Sino-Soviet Treaties of February 14, 1950, has been reduced by one-quarter through the subsequent Russian revaluation of the rouble.

It is more difficult to assess the impact of United States' leadership on the freedom of action of States in the Western world. The one thing which is certain is that the United States prefers to rely on the self-interest of other powers rather than on stronger, but less convincing, arguments. It is probable that the United States indicated the limits of British policy in Palestine and gave pertinent advice to

France regarding French Indo-China. It is likely that some of the more surprising changes in votes of delegates in the General Assembly on Palestine and on the disposal of the Italian colonies were inspired by the Department of State. The United States never made any secret of the fact that she thought the pound sterling to be overvalued, but took it in good grace when the sterling countries devalued below the point counselled by American experts.

On repeated occasions, the Department of State made it clear that it would welcome a closer integration of Europe, but it showed—and still shows—a remarkable patience on this subject.

More significant is United States reluctance to share with her allies the secrets of manufacturing atomic bombs and to entrust them with guardianship of the finished product. The leakages due to the espionage activities of Dr. May and Dr. Fuchs have provided some retrospective justification for a policy which, from the start, had been followed consistently by the United States and which had led Mr. Churchill to remonstrate in vain, several times, through Harry Hopkins with President Roosevelt. The 'functional' disguise of this monopoly is that, under the North Atlantic defence system, the United States is responsible for any strategic bombing that may become necessary, while short-range attack bombardment is entrusted to the European allies of the United States (General Bradley's testimony before the Foreign Committee of the House of Representatives, July 29, 1949).

The change in British attitude regarding the Special Committee of the General Assembly on Non-Self-Governing Territories—Mr. Fletcher-Cooke's announcement of full co-operation (*The Times*, August 19, 1950)¹—may be due in part to United States advice. It is at least as much prompted by the desire of keeping in step with the Asiatic members of the British Commonwealth. A humorous example of United States desire to be treated merely as *primus inter pares* is offered by the system adopted for chairmanship of the Council and of the Defence Committee of the North Atlantic Treaty Powers. The chair is being taken in turn 'according to the alphabetical order of the English language, but beginning at the end' (*The Times*, September 19, 1949).

It is yet too early to assess the significance of the somewhat abrupt announcement on December 13, 1950, of the suspension of Marshall Aid to the United Kingdom with effect from January 1, 1951. The elaborate form in which agreement reached on this point between President Truman and Mr. Attlee was announced to the House of Commons and to the public, and the way in which the Opposition

¹ See above, p. 692.

responded are, however, suggestive of the possibility that there is more behind these carefully staged acts than meets the eye.

Objectively, both the Soviet Union and the United States are typically hegemonial powers. In each of the world's halves, one or the other occupies a position of decisive *de facto* supremacy. On the periphery, States may have a chance of changing over from one to the other camp or of attempting to remain in a no man's land, as Yugoslavia tries to do, with little chance of success. None the less, here the parallel ends; for the guardians of the *Pax Americana* exercise the mildest form of hegemony that history has ever known. From a long-range point of view, this is likely to be a wiser policy than the more downright methods employed by the managers of the *Pax Sovietica*.

In the post-war world, Soviet foreign policy took the initiative. It is a matter of judging motives whether, in its initial phase, it was aggressive or defensive. 'It is in truth extremely difficult to know', Secretary Byrnes reflected in a broadcast after his return from a meeting of the Council of Foreign Ministers in May, 1946, 'to what extent the action of any nation may be ascribed to its quest for security or to its desire to expand'. In any case, Soviet foreign policy was based on complete disbelief in the possibility of relying on the Charter of the United Nations or on unity between the Big Three. Whether conducted for purposes of offence or defence, its general motto was expansion anywhere, but without running the risk of an armed clash with the Western powers.

On this basis, the whole of Eastern Europe from the Elbe to Rumania was incorporated into the Soviet orbit. Even China was snatched away from the Western camp under the very noses of the Americans on the spot. At the same time, the Soviets probed firmly the 'soft under-belly' of the Western world from Malaya and French Indo-China to the Near East. Finally, through the Cominform and the World Federation of Trade Unions, they did their best to interfere with the economic and military recovery of the West. Force was limited to use in forms which did not formally engage the responsibility of the Soviet Union: civil war and *coups d'Etat*.

To the rest of the world it looked as if, with Korea, Soviet foreign policy had entered a second phase. Only future events can show whether there is any substance in this hypothesis. It is possible to argue that Korea fell into the same category as the other cases of aggression from within. Korea is under an ill-defined trusteeship of the United Nations.² It is not a member of the United Nations and, on repeated occasions, United States military advisers had declared

² See above, p. 418 *et seq*

that, in terms of defence, it was untenable. Thus the Soviet rulers might well have thought that they were running less risks there than in Greece or Persia. For the time being, it remains an open question whether the Soviet-inspired action of the satellite regime in Northern Korea was merely a miscalculation or the beginning of a new phase which, starting with aggression by proxy, is likely to end in the Third World War.

The United States only gradually woke up to the fact that the world expected her to play the role of the counter-pole to the Soviet Union. By trial and error, President Truman and the Department of State evolved empirically a foreign policy congenial to the United States as the world's first power. The United States, being well contented with the post-war status quo, was perfectly willing to work within the confines, and through the organs and institutions, of the United Nations.

Initially, her strategic objective was the containment of the Soviet sector within the generous limits of the Crimea Conference. Since the last phase of the Second World War, this policy was pursued most consciously and consistently in the Pacific. Japan and the former Japanese mandated islands in the Pacific were regarded as essential parts of the American defence system in this area. So long as the hope of maintaining the Chiang Kai-shek regime in China could be reasonably entertained, United States military and naval experts could afford the luxury of doubting whether Japan was more of a strategic asset or liability. With the establishment of Communist China, Japan was no longer merely a static aircraft-carrier comparable to the United Kingdom in Europe. Her value was enhanced by being the only major reservoir of man-power left to the Western world in the Far East. Owing to their oil reserves, the Near and Middle East were the areas which next received serious attention from the United States. Then, by the Truman Doctrine, the United States underwrote the security of Turkey and Greece.

Since then the position has been still further simplified, as was proved by United States support of Yugoslavia in the 1949 elections to the Security Council; by the recognition of the French-sponsored regimes in French Indo-China, and by the prompt United States reaction to North Korean aggression. The expansion of the Soviet sector beyond any point, anywhere, is considered a threat to American security. If the Soviet Union is prepared to accept the status quo, peace will be preserved. If the Soviet Union attempts to break this *cordon sanitaire*, it will mean war: local war if the Soviet Union remains formally aloof, and general war if she openly associates herself with such aggression. Responsible United States leadership has,

however, wisely rejected the temptation of playing providence by starting a preventive war. The Truman administration promptly disavowed the Boston speech of Mr. Francis Matthews, Secretary of the Navy, in favour of 'aggression for peace' (August 25, 1950). Unimportant itself, it is symptomatic of the inflammable character of American public opinion and its susceptibility to the suggestion of 'Let's get World War III over'.

The limitations of this purely passive policy were made obvious by the Soviet counter-moves: aggression from within and by proxy. Czechoslovakia and China were lost by changes in the internal political and military balance of power in these countries and by the use of techniques to which, short of open intervention, the American policy of containment had no effective reply. In Korea, military aggression could be countered by collective measures, but in circumstances which the Soviets have it in their hands to prevent from recurring.

The second phase of American foreign policy was initiated by Secretary Marshall's Programme of Economic Aid to Europe. This constructive approach to the world's needs found its completion in President Truman's Point Four Programme and in Secretary Acheson's conception of total diplomacy. This policy supplements the containment policy by political, economic and military action, designed to help the nations of the non-Soviet world to help themselves. The United States is willing to provide the 'missing component' in the efforts of the other States of the free world. At this point, the programmes for European Economic Recovery, for Mutual Military Defence and for the implementation of President Truman's Point Four converge into two overall objectives: to regain the diplomatic initiative for the West by creating positions of strength in the whole of the non-Soviet world and to strengthen the non-Soviet world so as to make it unattractive for the Soviet-controlled world to attempt to breach the dividing line.

In his speech before the Senate Foreign Relations Committee on March 30, 1950, Secretary Acheson summarised this policy as follows:

'We are spending billions for military defence—as we must. We are spending other billions for economic reconstruction in Europe and vital points in the Far East—as we must. We are organising joint defence through the North Atlantic Treaty and the Military Assistance Programme. We are organising joint action to remove trade barriers through tariff and reciprocal trade agreements and through the International Trade Organisation. We are attempting to remove the causes of international friction and misunderstanding by playing an active role in the United Nations. All the things we do are, in the last

analysis, measures of national security—the broadest kind of security for our free and democratic way of life. This legislation that is before you, this “Act for International Development”, has the same broad purpose. In a very real sense, it is a security measure. And as a security measure, it is an essential arm of our foreign policy; for our military and economic security is vitally dependent on the economic security of other peoples.’

The essentials of the policies of the two antipodes are determined by the compression of the international oligarchy into two world powers and by the corresponding split of the international aristocracy into two divided camps. Clashes in ideology accompany this somewhat mechanical reaction of the two world powers towards each other and the alignment of the rest of the world around their centres of gravitation.

The aggressive character of Communism gives to Soviet expansionism an additional momentum and shrouds with dignity policies which, otherwise, would appear plainly as mere variations of the timeless pattern of universal imperialism.

In the Western world, too, the fight against the Communist menace lifts the present phase of world politics out of the ordinary and transforms it into a struggle for all the most cherished ideals of the Western world. For some, it may be free enterprise; for others, political democracy and the rule of law, and for still others Western civilisation or Christianity.

In fact, such ideological contests are like the fights between Homer’s gods which accompanied the war between the Greeks and Trojans. Western nations do not, however, contemplate war among themselves just because some of them are sceptical of American identification of monopoly capitalism with free enterprise. They turn a tolerant eye on sham democracies in Latin America or in the Near East. They even begin to see redeeming features in the Franco regime in Spain and accept as a regrettable necessity the racialism practised in the Union of South Africa.

In the inter-war years, the totalitarian character of the Soviet Union, with her secret police and forced labour camps, did not prevent the United States from establishing or maintaining correct diplomatic relations with that country. In 1942, Secretary Cordell Hull explained to M. Molotov that:

“When I came to the State Department in 1933, I recommended recognition of the Soviet Government on several important grounds. Probably the most important was the great need and opportunity for co-operation between our two Governments during the years ahead for the purpose of promoting and preserving conditions of peace in the world. My further grounds were the traditional friendship between the peoples of the two countries and the fact that it was

contrary to the best interests of two great nations such as the Soviets and ourselves not to be on speaking terms diplomatically in view of the existing circumstances in the international field' (*The Memoirs of Cordell Hull*, vol. I, 1948).

The same 'existing circumstances', that is to say, the threat of Nazi Germany and expansionist Japan, made it advisable for the majority of the members of the League to invite the Soviet Union to join the League of Nations.

During the wartime alliance between the Western democracies and the Soviet Union, it was conveniently forgotten that then, too, the Soviet Union had forced labour camps. Then, Soviet democracy, the Byzantine branch of European civilisation, and Russian Christianity were favoured topics of wartime ideology-mongering.

Since Yugoslavia's expulsion from the Soviet camp, the Tito regime is analysed very differently both in Moscow and elsewhere. What matters in a system of power politics, is not the capitalist, socialist or communist character of Yugoslavia's economy, nor the totalitarian or democratic structure of its State, but its strategic position and the likelihood of Yugoslavia's choice in case of any major conflagration.

This is not to deny the ethical values of Christianity and Communism—as distinct from its corruptions: Leninism and Stalinism—or the achievements of Western and Soviet civilisation. In contending for survival or domination, world powers necessarily stand, too, for the religious, ethical and legal concepts and institutions which are part of themselves. Any of these, however, has its appointed place.

In the present struggle, this is being found for the Patriarch of All-Russia and for the Vatican; for the World Federation of Trade Unions and the Federation of Free Labour Trade Unions; for the Federation of Democratic Lawyers and for the International Bar Association. Yet, systems of power politics existed before and after the advent of Christianity. They do not appear to have been seriously affected by this most powerful of creeds.

Is it then not somewhat naive to assume that much weaker ideas such as Democracy, National Self-Determination, Human Rights or Communism should be able to subdue the dragon of power politics? In any system of power politics, they are at least as much in danger of being abused as mere ideologies as was Christianity during the Crusades, during the Thirty Years' War, or in the era of the Holy Alliance. If what are held to be the greatest truths of mankind are exposed to such abuse, is it likely that such hasty improvisations as war aims and peace aims are to fare any better?

Little more than five years after the proclamation of the Atlantic Charter, Pope Pius XII spoke of this document in words rarely heard from the high and mighty (Christmas Allocution, 1946) :

'When the Atlantic Charter was announced for the first time, all the nations listened. At last one could breathe freely. But what now remains of that message and its provisions? Even in some of those States which, either by their own choice or under the tutelage of other and greater Powers, like to present themselves to mankind today as the champions of a new and true progress, the Four Freedoms, once enthusiastically greeted by many, appear now as a shadow or a fraud of what they were in the thought and the intention of the more honest of those who proclaimed them.'

It took less than a quinquennium to reveal the true place of the United Nations in world politics.

THE REALITY OF WORLD POLITICS AND THE IDEOLOGY OF THE UNITED NATIONS

The hope that the United Nations would be the guardian of world peace was based on the assumption of continuing harmony between the world powers.

It was taken for granted that the major powers would be able easily to cope with the task of re-establishing peace with all the defeated enemies. Then it would be for the United Nations to maintain the new status quo. This was the first fallacy. The victorious powers failed to agree on the future of Germany and Japan. They were not even able to settle among themselves the future of the Italian colonies or to implement the promises held out to Austria. This, however, proved to be merely a minor illusion.

The major hypothesis was that, in any event, the world powers would regard the maintenance of the United Nations peace as the supreme object of their foreign policies and that they would subordinate any differences, that might arise between them, to this supreme purpose: 'The successful working of the United Nations depends on the preservation of the unanimity of the Great Powers; not of course on all the details of policy, but on its broad principles' (*British Commentary on the Charter of the United Nations*—Cmd. 6666, 1945).

This was the basic assumption of the whole United Nations design. On this assumption alone was it possible to meet the *sine qua non* of membership of the Big Three in the United Nations: their absolute veto in all matters of substance within the competence of the Security Council, in which they were not directly involved, and in all matters without any reservation in the sphere of collective

enforcement measures. If anyone concerned had dared to breathe that this unstated major premise of the United Nations might prove to be fallacious, the San Francisco Conference might have saved itself its labours.

In this case, events would unfold themselves in accordance with Mr. Churchill's warning to Marshal Stalin (letter of April 29, 1945—read by Mr. Churchill in the House of Commons on December 10, 1948):

'There is not much comfort in looking into a future where you and the countries you dominate, plus the Communist parties in many other States, are all drawn up on one side, and those who rally to the English-speaking nations with their associates and dominions are on the other. It is quite obvious that their quarrel would tear the world to pieces, and all of us, leading men on either side, who had anything to do with that would be shamed before history. Even embarking on long periods of suspicion, of abuse and counter-abuse, and of opposing policies, would be a disaster, hampering great development of world prosperity for the masses, which are attainable only by our trinity.'

It was the misfortune of the United Nations that it was launched into a world which was more like that envisaged by Mr. Churchill than that for which, at Dumbarton Oaks and San Francisco, the Organisation had been designed. Representatives of each of the two camps made it unmistakably clear that they were mortally afraid of each other.'

It will suffice to give two more samples from this cacophony. At the Moscow Soviet Meeting on the thirtieth-second Anniversary of the October Revolution in 1949, M. Malenkov, Secretary of the Soviet Communist Party, propounded:

'It is precisely the successes of the camp of peace that drive the warmongers to increasing frenzy. The programme of the main enemies of peace becomes more nakedly revealed every day. This programme envisages the creation by means of violence and new wars of an American world empire, which in scale is to surpass any of the world empires built by the conquerors in the past. The idea is nothing more nor less than to turn the whole world into a colony of the American imperialists, to reduce the sovereign peoples to the status of slaves.'

In a series of speeches—at a gratifyingly high intellectual level—Secretary Acheson gave the American rejoinder. Suffice it to quote from his speech to the American Society of Newspaper Editors (April 23, 1950):

'Make no mistake about it: we are faced with a challenge and a threat to the very basis of our civilisation and the very safety of the

* See above, pp 157 and 517 *et seq*

free world, the only kind of world in which that civilisation can exist. . . . We do not propose to subvert the Soviet Union. We shall not attempt to undermine Soviet independence. And we are just as determined that Communism shall not by hook or crook or trickery undermine our country or any other free country that desires to maintain its freedom. That real and present threat of aggression stands in the way of every attempt at understanding with the Soviet Union. For it has been wisely said that there can be no greater disagreement than when someone wants to eliminate your existence altogether.'

In such an atmosphere, what hope was there for the successful operation of the United Nations machinery?

In the Security Council, the Western world enjoys a comfortable majority. It could, therefore, be left to the Soviet Union to demonstrate that world peace was not her supreme value. In order to avoid hypocrisy on this subject, it is salutary to contemplate the hypothetical case of a Security Council with a Communist majority. Then, the roles would probably have been reversed.

The Eastern majority would scornfully refer to the 'abuse of right', constituted by all too frequent use of the veto by the Western powers, and these would insist no less firmly on the untrammelled exercise of this 'sacred right of a minority'. As it is, in all matters which affect East-West relations, the Soviet Union uses her veto to stultify the whole system of the Charter for the pacific settlement of political disputes.

Those who advocate the recognition of the Communist Government of China by the United Nations may have profound *arrière-pensées* of their own. Yet one consequence of this policy is certain. In every case in which the Soviet Union were directly involved, the adoption of this policy would provide her with a veto by proxy. In other cases, it would enable the Soviet Union to relieve the monotony of her vetoes by the more colourful pattern of alternating Soviet and Chinese vetoes or by the massed veto of the two Communist powers.

The optional character of the jurisdiction of the International Court of Justice prevents the 'principal judicial organ of the United Nations' (Article 92 of the Charter) from substantially affecting East-West relations. None of the States within the Soviet orbit are signatories to the Optional Clause (Article 36) of the Court's Statute.

In one case which touched the periphery of these relations, the *Corfu Channel Case* (1949), even the weakest and most exposed of all the Soviet satellites in Europe, Albania, has refused, so far, to pay the indemnity which the Court has imposed on her and, with apparent impunity, defies the United Kingdom, the International Court of Justice and the United Nations.

rect negotiations between the United Kingdom and the United States. If it did not lead to a settlement, the United Kingdom might refer the matter to the Security Council and see her request for a settlement to be taken to give effect to the judgment' (Article 94 of the Charter of the United Nations). Were British policy on the matter to prevail in the Security Council, China, too, might be required to give effect to the same way British recognition on credit.

Case brought before the International Court of Justice, the United Kingdom made a request from the General Assembly for an advisory opinion on the *Interpretation of the Peace Treaties with Hungary and Rumania* (1950). With the notable exception of Judge Azevedo and Judge Read, the majority of the Court was of the opinion of judicial caution and made itself the involuntary witness of flagrant attempts on the part of these satellite States to evade their obligations under the Peace Treaties of 1947.

Relations between East and West, the pacific settlement of disputes remains for all practical purposes, as of old, diplomatic negotiations between the world powers. This cannot be controverted by reference to the few minor disputes before the United Nations in this field.

Within the Western world, the fate of Palestine was settled. The Kashmir dispute remains a standing threat to peace between India and Pakistan, and the Union of South Africa does not recognize the mandated territory of South-West Africa. In the world frontier, the United Nations has received some credit for the stand taken by the United Kingdom and the United States on the evacuation of Soviet troops from Persia and the integrity of Turkey. The blockade of Berlin was not won by the verbal battles in the Security Council, but by the American air lift and the hesitation of the Soviet Union to start a Third World War over Berlin. This would have been a supreme irony.

For all the little the existence of the United Nations may have influenced the course of East-West relations, it has influenced the choice of policy which the world powers employ all along the unsettled frontier. Intervention is legal if carried out with the consent of the local government. In Greece, Kuomintang China and the Republic of China, this rule worked in favour of the West. It applies to Korea where, from the point of view of the majority of the members of the United Nations, the government of Southern Korea is the legitimate government of Korea. In Soviet-controlled States the rule works in reverse against any Western-sponsored resistance—movement.

If the internal balance of forces is to be changed in favour of one or the other camp, it matters little under the Charter whether this is done by democratic means or by revolution. What has to be avoided is open intervention by any other member of the United Nations. In this way, Czechoslovakia and China were incorporated into the Soviet camp. Those who object to such changes call this technique aggression from within, but find that the Charter does not provide for this contingency. Thus, a premium is put on well camouflaged intervention by the world powers in the internal affairs of the 'sovereign and equal' members of the United Nations.

If this is peace, it is not the peace of an international community. It is a relative peace which means only the absence of formal war between nations. This relativity of peace and war has always been one of the characteristics of systems of power politics.

In the overall relations between West and East, this precarious state of international relations is described in common parlance as cold war.¹ However incorrect in law, this term aptly indicates the temperature of the atmosphere between the chief guardians of the United Nations peace. At a time, when the world powers are not yet ready for a major war, such measures, together with trial wars and wars of aggression by proxy, are devices for obtaining the advantages of war, but without incurring any formal responsibility for the commission of the 'supreme international crime' (Judgment of the International Military Tribunal of Nuremberg, 1946—Cmd. 6964). Although any of the world powers can defy the United Nations by the exercise of its veto and, thus, can afford to forego such stratagems, for the time being, the Soviet Union has considered it advisable to pay at least the tribute of circumvention to the Charter of the United Nations.

In this environment, universal collective security, as envisaged by the Charter, is a chimera. During the interlude of Soviet self-exclusion from the Security Council, the United Nations had its Indian summer of collective security. While the one side of the world balance remained unrepresented, the machinery of the United Nations worked without the slightest hitch. When M. Malik re-entered the scene, the majority of the Security Council woke up to find the aggressor by proxy in the Chair, and the Security Council returned to its routine of aimless debates on its agenda and procedure.

The escape clauses of Articles 51 and 107 are the refuge of governments which must seek security by national armaments, alliances and counter-alliances. It was a triumph of United Nations parlance to call 'unconventional' the means of mass extermination which West and East prepare for their mutual self-destruction. With growing

apprehensiveness in the West of Soviet designs and steady rearmament, the burden of armament grows and, correspondingly, reconstruction is retarded or indefinitely postponed. The attitude of all the world powers to armaments may be summarised in Defence Secretary Johnson's *staccato* sentence (testimony before the House of Representatives Foreign Affairs Committee, July 29, 1949): 'I am suspicious of all disarmament talk.'

Freedom from fear remains as much an unfulfilled dream as in the days when President Roosevelt held out this promise to tormented mankind. Limitation and reduction of armaments sound like language from another planet. Rules of warfare in the atomic age have still to be written. In any major war to come, mutual fear is likely to be the only restraining influence. Yet, when the weaker side realises that it has nothing to lose and everything to gain from the desperate use of 'miracle' weapons, it is likely that it will resort to any means at its disposal. The indiscriminate use by Germany of the V-weapons in the last phase of the Second World War is a more reliable parallel than the fact that none of the belligerents in that war used poison gas. But even this forecast may prove to be unduly sanguine if any aggressor should be addicted to the theory of the first decisive blow.

The rest of the activities of the United Nations fit into the overall picture. In the best of circumstances, functional international co-operation between democratic and totalitarian States is difficult; for, in the latter, everything tends to become political. In a sharply divided world, even innocuous activities of specialised agencies such as the World Health Organisation cannot be allowed to break through the security curtain of totalitarian States. Thus, after a short flirtation, the Soviet Union, her European satellites and China withdrew from the World Health Organisation.

The subordination of economics to politics is still more complete. International economic co-operation follows in the wake of political co-ordination in each of the world's halves. On both sides, it has collective features. This is the necessary consequence of the growing dependence of the weaker members of either group on their political, military and economic centres. National power economics are supplemented, and replaced to a tangible extent, by international power economics.

Still more difficult is it for institutions in the ideological field to keep out of the world contest. The co-operation of some of the Eastern European satellites with UNESCO was always something of an oddity, but, for all practical purposes, has come to an end. Now, the United States, which is footing more than half of the bill of

JNESCO's budget, becomes impatient of the 'objectivity' displayed by this specialised agency of the United Nations. It will be an interesting experience to watch whether and, if so, how quickly, the pipers will change their tune.

All the more futile are the long drawn-out attempts at devising a common denominator for human rights which are equally acceptable to democratic, authoritarian and totalitarian members of the United Nations.

On all sides, the simple truth is conveniently forgotten that human rights in the Western sense are only secularised religious values. When man is no longer visualised in God's image, then he is no longer protected against being used as a means to merely human ends. Then his basic rights and fundamental freedoms have lost their metaphysical *raison d'être*.

In the relations between Western nations, which have largely forgotten their spiritual heritage, and Eastern nations, which have either jettisoned it or never shared it, the efforts to agree on any joint definition and protection of human rights have degenerated, of necessity, into aimless and venomous battles of words between the champions of East and West. Discrimination against negroes in the United States and forced labour camps in the Soviet Union existed before, during and after the Second World War. Like the concentration camps of the Third Reich, such black spots are conveniently forgotten and remembered, as the expediencies of world power politics dictate.

In the colonial field, the Western world is tactfully on the defensive. The neglects of generations cannot be remedied in a day. More pressing necessities of reconstruction at home, and the growing burden of rearmament limit the implementation of national and international colonial trusts. Soviet pressure all along the colonial frontier, and constant nagging in the General Assembly and in the Trusteeship Council may, however, act as the force that always would work evil, yet—in this case—will work for good.

THE RESULT: POWER POLITICS IN DISGUISE

The glaring discrepancies between professed and actual foreign policies, between word and deed, in the era of the United Nations repeat the experiences of the inter-war period.

The peace-makers of 1919 were as free as any victorious coalition ever will be to mould the world according to their hearts' desires. They strove to establish a true international community. They qualified this resolve, however, by two fatal reservations. The Allied

and Associated Powers insisted on a harsh peace for the vanquished and on safeguards against collective action which, for all practical purposes, left their national sovereignties intact.

The peace settlements, though hard, were certainly not Carthaginian. They suffered from a worse deficiency: half-heartedness. They were not sufficiently crushing to prevent the defeated nations from ever raising their heads again. At the same time, they were stringent enough to be felt as intolerable burdens by the post-war generations in the countries of the former Central Powers. Thus, the Peace Treaties of 1919 neither served to secure the new status quo nor did they lead to any reconciliation between the former enemies.

The League of Nations was conceived in a community spirit, but its Articles stood in strange contrast to the rest of the clauses of the Peace Treaties of 1919. The contradiction might have been resolved in favour of the Covenant. This instrument, however, suffered from a no less fatal self-contradiction. It fixed the aims of the new international community, but every time left it to the unanimous will of the members of the League to agree on implementing these purposes. This was tantamount to denying the League the means of achieving its objectives.

As President Wilson had foretold, in 1919, it proved impossible 'with one foot in the Old Order and the other in the New to arrive anywhere'. The representatives of the nations assembled in Paris considered the Covenant as the maximum of the concessions which they, and their nations, were prepared to pay for the maintenance of world peace. From 1931 onwards, one nation after the other had the opportunity of experiencing for itself the wisdom of this decision. The effect of this policy was not to tame power politics, but to subordinate the League of Nations to the overriding needs of the rule of force.

In 1945, the experience of 1919 was largely repeated. This time, the victors did not even succeed in making a joint peace with their major enemies, Germany and Japan. Instead, they insisted on demonstrating their disunity in front of their former enemies and on competing against each other for the defeated nations. They created the United Nations Organisation, which could work only on dubious assumptions, and they firmly stuck to inveterate patterns. The instruments, strategies and tactics of power politics remained unchanged. Both in the eras of the League of Nations and of the United Nations, the gap between the ideals of these collective systems and reality was bridged by processes of de facto revision of the Covenant and Charter, that is to say, by the adaptation and subordination of these commitments to the requirements of world power politics. In both cases, the

sult was the same. What emerged was a system of power politics in disguise.

Such a system is essentially an evolution of pure power politics, requires a two-level foreign policy. Scope for such a division of labour is provided by the confederate character of international organisations such as the League of Nations and the United Nations. Imitation of collective organs to making recommendations, the unanimity principle or the veto in bodies authorised to make decisions, and widely formulated escape clauses are the most favoured devices to this end. In the absence of basic unity between the members of such a confederation, the art of power politics in disguise consists in pursuing your own sectional objects on the higher level and in forcing your enemy into the unpleasant choice between submission on his level and incurring the blame for resorting to the reserve powers.

In this game, the powers who, in 1919, were content with the new *tatus quo* had an advantage over those who challenged this order. The presumption in international law is always in favour of the existing position. The Peace Treaties, and the Covenant in particular, endowed the *tatus quo* with the sanctity of international law. The position under the Charter is substantially the same. Peaceful change in international relations still depends on consent. Furthermore, the Western world has comfortable majorities in all the organs of the United Nations. As the disposal of the Italian colonies has proved, even the potential anti-colonial *'bloc* can be appeased at a point where the Soviet *bloc* is condemned to ineffective isolation.

It would be mistaken to convey the impression that power politics in disguise is always pursued consciously and consistently by any of the powers. As in systems of pure power politics, our present-day statesmen may claim the privilege of acting by instinct and without always being—or desiring to be—aware of the implications of their actions. The only places where matters are discussed rationally are the defence ministries and the gatherings of staff committees of any power or group of allied powers. In political action and peroration, an overdose of insight is a definite handicap. Foreign ministries and their understudies must be able to make their set speeches about the United Nations being the cornerstone of their national policies and all that, with becoming sincerity. They need the comfortable feeling that if it were not for power X, Y or Z, universal peace would be just round the corner.

It would be unjustifiable to assume that politicians are the only practitioners of the art of make-believe. They draw considerable comfort from a host of scientific day-dreams on international affairs. It would be invidious to single out individuals. Anyone who is

familiar with the relevant teachings and writings of the inter-war period, should read for himself the analyses of the League of Nations or of regional pacts which were poured out in those years. The proceedings of the International Studies Conference on Collective Security and Peaceful Change under the auspices of the International Institute of Intellectual Co-operation contain some magnificent material for a yet unwritten study of the Sociology of the Sciences of International History and of International Relations. Books like those of Professor Schuman, Sir Alfred Zimmern or Mr. Carr shine as lonely exceptions to the rule.

In the post-1945 period, the Foreign-Office-conscious and the evangelist schools no longer hold the monopoly in the field. Both are, however, still strongly entrenched in the academic world. We are told that the United Nations is the world's only hope! If this were true, the only possible reply would be: what a hope! We are assured that half a loaf is better than no bread at all. But no analysis whether the demi-loaf is stone or bread appears to precede this profound proposition. We are warned against plausible pessimistic interpretations of current international relations and admonished to join the bandwagon of naive optimism. Yet do those who tender such sage advice remember how often in the past they have proved wrong? Do they recall that their counsels regarding the United Nations are only freshly dished up hotchpots of pre-war left-overs?

In any case, this whole argument is pre-scientific. Conclusions of research may be optimistic or pessimistic. This does not affect their truth-value one way or the other. If reality is sombre, then the results of any scientific analysis must necessarily mirror the colour of the object of analysis. If the implied counsel should be that the conclusions of research on international relations in general, and on the United Nations in particular, should be pre-determined, then such enterprise ceases to be science and becomes propaganda in disguise.

It is to the credit of the political profession that, out of its midst, a warning has been sounded against the danger of academic teachers and writers being tempted to jeopardise their most cherished possession: their scientific integrity. In an address delivered during the Appeasement Period to the University of Wales at Swansea (July 16, 1938), Lord Baldwin spoke words which have lost none of their significance:

'Statesmen, today, look upon the university as one of the bulwarks of that freedom of thought which is essential to living for the world. The university should be able to give all young men and

young women the best of what there is. The university should always give them the truth. When learning becomes proscribed to politics, there are no depths to which it cannot descend. Maintain at all costs the standard of truth.'

In the United Nations Secretariat on this Press Report, the two-level policy in the United Nations has been abbreviated D.D.T. These initials stand for Diplomatic Double Talk. If any Foreign Office could not rely on the natural perceptiveness of its delegates in the various organs and specialised agencies of the United Nations, it might be tempted to issue a *cale-mecum* of the codes of D.D.T. As in Machiavelli's *Prince*, in such a grammar of power politics in disguise, description of actual behaviour might be couched in the imperative. This document (marked top-secret and protected by the provisions of the respective official secrets acts) might run as follows.

Alternative mottoes. '*Si vis pacem, para dolo bellum*' or 'The ambassadors of peace shall weep bitterly' (Isaiah 33, 7).

I. *Basic Policy.* Always insist on the United Nations as the cornerstone of the foreign policy of your government and on the inherently peace-loving character of both your own government and of your own country as a whole.

(a) Support all resolutions to this effect in the General Assembly if proposed by other peace-loving—friendly—nations (list attached - Appendix 1).

(b) Show suitable scepticism regarding resolutions which use similar words, but are fostered by obviously war-mongering—unfriendly—States (list attached - Appendix 2).

(c) In case of doubt regarding draft resolutions under (b), abstain from voting.

(d) Draft treaties on the outlawry of war and of aggression must contain clauses which—

- (1) preferably leave it to each party to determine for itself whether any particular war is aggressive or defensive;
- (2) should clearly provide for the natural right of individual and collective self-defence;
- (3) should not go beyond the obligations undertaken in the Charter of the United Nations (veto).

Note: Modifications of this basic policy can be considered if further competences were entrusted to organs in which, in any foreseeable future, war-mongering States (see Appendix 2) are certain to remain in the minority.

II. *Pacific Settlement of International Disputes*

(a) No further machinery beyond that provided in the Charter is required. It allows for the necessary freedom of action which is the inalienable prerogative of every sovereign State.

(b) In any concrete dispute, compare Appendices 1 and 2. In the conditions of modern warfare and, in view of the general unreliability of all information, appearances are deceptive. These lists furnish, therefore, more authoritative guidance on the relative merits of the parties to *any* dispute than so-called evidence that may be produced by war-mongering States (see Appendix 2). Do not depart from this instruction without express authorisation to the contrary.

III. *Collective Security*

(a) The armaments of your own country and of other peace-loving nations (see Appendix 1) are the only reliable guarantee of collective security.

(b) In view of the disturbing policies pursued contrary to the Charter of the United Nations by war-mongering States (see Appendix 2), universal collective security is unfortunately, for the time being, not a practical proposition.

(c) The nearest approach to this goal that is feasible in the present unhappy state of the world, is the treaties of mutual assistance and of collective defence which have been concluded between this country and other peace-loving nations (see Appendix 1).

(d) It is the unshakable resolve of your Government to develop collective security to its utmost limits by further increases in its own defensive forces and by additional concerted measures in accordance with Articles 51 and 107 of the Charter of the United Nations.

(e) Avoid committing yourself to any entanglement in regional agreements under Chapter VIII of the United Nations Charter. Enforcement measures under this Chapter depend on prior authorisation by the Security Council and may be made impossible by the exercise of the veto on the part of any war-mongering permanent member of the Council.

IV. *Limitation of Armaments*

(a) In principle, express yourself always in favour of limitation of armaments or even of disarmament.

(b) Explain that your Government has already voluntarily kept its own armed forces below the national safety minimum, and that any further international engagement on this subject would not be

conducive to the promotion of a true system of collective security (see above under III).

(c) On the assumption that the war-mongering States (see Appendix 2) are not likely to agree to international inspection or to control of their own armaments, you should expose the obvious insincerity of their proposals by insisting on such indispensable prerequisites of any convention on this subject.

(d) Should the war-mongering States (see Appendix 2), contrary to their real intentions, pretend to agree to any such conditions, you must regard such a manoeuvre as clear evidence to the effect that they have in advance, devised means of evading such supervision. In this case, make your consent dependent on any further safeguards that you may be able to conceive. The test of the value of your own amendments is whether they are acceptable to the war-mongering States. In this case, it is conclusively proved that such sham guarantees would be merely a snare for any truly peace-loving nation (see Appendix 1).

(e) In case of doubt, and in the absence of express instructions to the contrary, limit yourself to declarations on the lines of (a) and (b) above. You are, however, always authorised to state that, owing to the menace which the activities of the war-mongering States (see Appendix 2) constitute to the maintenance of world peace, your Government—much against its will—is forced to strengthen its own defence forces. In case the initiative regarding measures under this heading does not come from any of the States listed in Appendix 2, but from any potentially peace-loving State (that is to say, from any State which must be saved from falling a victim to the lures of the war-mongering States), you are entitled to qualify your ultimate refusal by the statement that, at a more propitious moment (in the not yet foreseeable future), your Government would be delighted to give its full support to proposals inspired by such high ideals which it fully shares.

V. Economic International Co-operation

(a) Always remember that every peacetime economy is a potential wartime economy.

(b) Take the initiative in promoting, or support, any steps which, from this point of view, strengthen the economic position of your own country and of other peace-loving nations (see Appendix 1) and point out the reactionary character of any measures which are likely to benefit the war-mongering States (see Appendix 2). Be especially on your guard against any seemingly unrequited assistance to any of the war-mongering States to other war-mongering States.

Such generosity—merely simulated—is a sure sign of the intensification of their preparations for war. If any of the war-mongering States should dare to make such improper offers to any of the peace-loving States, it is your imperative duty to communicate immediately such information to your Government and to concert with the delegates of all other peace-loving nations to nip such contemptuous and underhand manœuvres in the bud.

VI. *International Protection of Human Rights*

(a) Express yourself in favour of any catalogue of human rights which is acceptable to other peace-loving nations (see Appendix 1).

(b) Use such opportunities as may occur to drive home the retrograde character of all the war-mongering States (see Appendix 2).

(c) Avoid, if possible, any binding legal commitment altogether. In any case, any form of outside interference with the application of these principles would be incompatible with the rights and duties of sovereign and equal States under the Charter of the United Nations.

VII. *International Trusteeship*

(a) (*Only suitable for delegates of colonial powers*) Explain the progressive character of your colonial administration, its superiority to any system of international trusteeship, in the supervision of which war-mongering nations (see Appendix 2) participate, and emphasise the backwardness and barbarian character of the home administration of non-colonial war-mongering States.

If pressed by delegates of non-colonial, but peace-loving States (see Appendix 1), express yourself in agreement 'in principle' with them, but avoid any commitment which affects the actual administration of the colonies of your own country. Such interference would be most strongly resented by the populations of such non-self-governing territories. The last thing they want is meddlesome interference by third powers in their harmonious relations with the mother country.

(b) (*Only suitable for delegates of non-colonial powers*) Use every opportunity of pressing the rights of colonial populations who are subject to brutal oppression by predatory and imperialist States (list identical with that of war-mongering States—Appendix 2). Be aware of the constructive opportunities which, on occasions, the promise not to use this weapon offers for obtaining a just quid pro quo. Firmly insist on non-interference by the United Nations with the internal affairs of your own country. Any such improper curiosity would be clearly contrary to the sacred freedom of your Government.

o do what it likes in matters which are essentially within the domestic jurisdiction of States (Paragraph 7 of Article 2 of the Charter).

VIII. *Admission of New Members*

(a) In each individual case, you should not commit yourself without express instruction from your Government.

(b) Informally, you are free to promote the admission of any new member which is likely to strengthen the front of the peace-loving nations (see Appendix 1).

(c) Conversely, you should do everything in your power to bring to nought attempts at strengthening the ranks of the war-mongering States (see Appendix 2).

IX. *Material for Reference*

(a) Everything that you are likely to be required to say has, on previous occasions, been expounded by your predecessors. Consult, therefore, the digest of speeches with which you have been supplied (Appendix 3).

(b) In case any new problem should arise, it is likely to have been covered already by the representatives of this country in the former League of Nations. As, however, the circumstances which may then have made any particular course advisable may have fundamentally changed, such material should only be used after consultation with the scientific adviser of your Delegation.

(c) The scientific adviser is also likely to be able to furnish you with suitable press cuttings and other relevant documents from war-mongering States and with appropriate quotations from reliable authorities. As, however, without full acquaintance with such works, their use may expose you to the danger of malicious repartees, such unfortunate incidents should, if possible, be avoided.

It is only to be expected that this grammar of power politics in disguise will be greeted with a universal chorus of dignified indignation. Gentlemen— and comrades—do what they must do in the interest of their cause, whatever this may be, but they do not always want to know what they are doing. They react in very much the same way as Briand, when he was asked by somebody whether a speech of his had really been sincere. The prompt reply of this shining light of the *Chambre des Députés* and of Geneva was probably quite honest: 'How should I know?' They may admit in unison that representatives of the 'other camp' indulge in such two-level policies, but they do not wish to be subjected themselves to such an unkind *dénouement*.

In the Political Committee of the First Session of the General Assembly (November 30, 1946), Sir Hartley Shawcross decried M.

Molotov's Disarmament Plan as a 'fraud, a delusion and a snare'. In the following General Assembly (September 18, 1947), M. Vishinsky devoted a whole speech to the subject of war-mongers. According to his analysis of the setbacks which the United Nations had suffered, these were 'to a large extent a result of a tendency of such influential members of the United Nations Organisation as the United States of America and Great Britain to utilise the Organisation in the interests of their small group without any regard for strengthening international co-operation on the basis of the principles expressed in the Charter'. Then followed the usual galaxy of Soviet vituperation.

In the years that followed, this kind of mutual denigration became standard form. In the General Assembly of 1949 (September 26), Mr. Bevin charged the Soviets with 'constant repetition of untruths', and, in the Political Committee (November 14, 1949), Mr. Warren Austin depicted the Russian Peace Resolution as an 'artificial olive branch surrounded by thorns'. By the time the Security Council discussed Korea, the slanging match between East and West had become still rougher. M. Malik spoke of this 'bloody colonial business' and of the South Koreans as 'American slaves controlled by American *Gauleiters*'. Sir Gladwyn Jebb disposed of M. Malik's case as a 'gigantic falsehood'. Mr. Austin entertained the Council with such wit as he could still generate :

'When the housewife tins her vegetables in the autumn, she puts a label on each jar before storing it away in the cellar. If she puts the label "peaches" on a jar containing apple sauce, the label does not magically change the contents. Let us examine a jar put before this Council by the Russian representative. . . . Sir, I am in a position to open that falsely labelled jar and let the world see what is inside—apple sauce' (August 22, 1950).

On the most benevolent assumption, both sides may be granted the benefit of desiring to act in accordance with the principles of the Charter. It is irrelevant whether this is actually the case or not. It is sufficient if one side lacks faith in the sincere intentions of the other; for it is then likely to act on its suspicions. Then both sides force each other with increasing momentum into the morass of action on the lowest denominator, a psychological law in society relations on any level. All the more does this apply when acts belie words, and it becomes evident even to observers who wish to remain unbiased that one side actually operates on the level of power politics in disguise. It then prescribes to the other side the law of action. Views in the West and East naturally differ on the responsibility for this sorry state of affairs in the United Nations.

We may still be too near to events to pass even a fairly detached judgment on the relative faults and merits of the behaviour of the powers in the United Nations. We can, however, already see the League of Nations—the other system of power politics in disguise—in perspective. Would anyone venture to suggest that its breakdown was primarily the fault of this or that power? Do the sins by commission of Japan, Italy or Germany obliterate those of omission by the United States in absenting herself from the collective system or of the British Commonwealth and Empire and of France in doing too little, and that too late?

Everyone is entitled to answer these questions for himself. So long as rational explanations are given, wide scope for agreement to disagree must exist. The answer which is attempted here is merely the writer's own personal conclusion. It is that none of the powers was prepared in 1919 to try wholeheartedly the experiment of exchanging the tried system of national security—or insecurity—for that of international security. Just as there is a minimum of competences which a national community requires to exchange in such for government, so an international community calls for a minimum of effective jurisdiction. An international confederation remains below this minimum.

This was exactly the reason why this pattern was chosen in 1919. The gap was formally bridged by assumptions which, in the hour of need, remained unfulfilled. To leave to every member its freedom of action in any crisis was the reason for these charitable assumptions. Whenever such critical decision had to be made it was found, more often than not, that the collective system could not be brought into effective operation. In one case or the other, it was true to say of every greater League power what Lord Cecil regretfully noted regarding British policy in the Italo-Ethiopian Dispute (*All The Way*, 1949): 'Our Ministers made eloquent speeches about the importance of supporting the League, but ultimately failed to do so, again on the ground that we had no national interest in the independence of Abyssinia.'

Is the situation so different with the United Nations? On the assumption of unity between the permanent members of the Security Council, it is quite possible to argue that the United Nations shows some features of a federation. The Security Council has the competences of a true executive organ in matters which affect world peace, and the members of the United Nations are bound to carry out its instructions under Chapter VII of the Charter.

The only snag is that the occasions on which the Security Council can attain the necessary concord among its permanent members are

extremely rare. In any serious conflict between world powers, the United Nations is constitutionally incapable of action under Chapter VII of its Charter. The quasi-federal elements in the organisation of the United Nations faithfully reflect something else: the relative irrelevance of the sovereign and equal States other than the world powers and the penultimate stage which the compression of the international oligarchy has reached.

As in 1919, so in 1945, the powers that matter have failed to give to the United Nations the powers on which the transformation of international society into an international community depends. In a moment of despair, Mr. Byrnes put the crux of the matter in a nutshell: 'My friend,' he said to a newspaper man, 'I've not only explored every avenue, but I've gone down every lane, byway and highway. I've tried everything I ever learned in the House and Senate. But there I worked with a majority rule. This is more like a jury. If you have one stubborn juror, all you can expect is a mistrial' (*Speaking Frankly*, 1948).

Again the gulf between the objects and the means at the disposal of this international confederation with federal admixtures was spanned by unrealistic assumptions. In both cases, super-Coudéism on the part of those most concerned and the accompanying chorus of ideological make-believe, evangelical zeal and arrogant intolerance towards too well-founded scepticism, were secondary symptoms of the real character of these eras of power politics in disguise.

It would be fatal to think that the flaws in the Covenant and Charter are merely technical deficiencies, which could easily be remedied. The reason why, in 1919 and 1945, neither of the international peace organisations was endowed with the necessary competences lies deeper. World society is not an international community.

Each of the world powers stands for values which it cherishes more highly than universal peace. In particular, the totalitarian States live in constant 'fear of friendship' (Mr. Churchill in the House of Commons, March 28, 1950). They know that only by shutting off their peoples from contact with the West can they make them endure their present state of semi-serfdom. Without such pressure, their ruling cliques could not maintain themselves in power nor could they achieve their goal of large-scale industrialisation, the prerequisite of both their military power and of the ultimate attainment of higher standards of living. Thus, they treat the rest of the world as potential, if not actual, enemies. Slowly, and with hesitation, the non-Soviet world reciprocates. Both camps accustom themselves, in dealing with each other, to rely on the traditional

safeguards of power politics. The only concession which they all make to the ideology of the United Nations is the practice of foreign policy on two levels. Thus, it is a complete illusion to imagine that world peace depends on the United Nations. The United Nations depends on peace between the world powers. The problem of how to break the vicious circle of power politics in disguise is still unsolved.

PART THREE

CONDITIONS OF
INTERNATIONAL ORDER

*' Let us never accept the theory of inevitable war; neither
let us blind our eyes to the remorseless march of events.'*
Mr. Churchill in the House of Commons (March 10, 1936).

CHAPTER 33

THE PROBLEM OF INTERNATIONAL PLANNING

'What Archimedes said of the mechanical powers, may be applied to Reason and Liberty: "Had we," said he, "a place to stand upon, we might raise the world".' Thomas Paine, *Rights of Man* (Part Two, 1792).

It has been grudgingly conceded by historians, lawyers and philosophers that international relations as a distinct academic discipline has come to stay. If pressed, spokesmen of more senior sciences may even admit that the sociological treatment of international relations is the most congenial approach to this topic. Under their breath, they are likely to murmur that they do not know what sociology is, but they usually do not show much inclination to receive the necessary enlightenment. What they mean is that they bitterly resent any sociological interpretation of their own disciplines and of their own place in society. If they can, they will avoid committing themselves on the truth-value of the interpretation of international relations of the past and present in terms of power politics and of power politics in disguise.

If their mental stature inhibits them from flying in the face of reality, they will retort that such analysis amounts merely to stating the obvious in obscure language—as if this were so different in other branches of human knowledge—or they will despairingly declare that the 'history of power politics is nothing but the history of international crime and mass murder (including, it is true, some of the attempts to suppress them)' (K. R. Popper, *The Open Society and Its Enemies*, vol. 2, 1945). The limit of tolerance to efforts which cannot be discouraged or suppressed is reached when the science of international relations ventures to concern itself with questions of international planning.

Such opposition is itself a fascinating subject of psychological and sociological analysis. In exceptional cases, it may be the result of true humility and wisdom: 'About politics one can make only one completely unquestionable generalisation, which is that it is quite impossible for statesmen to foresee, for more than a very short time, the results of any course of large-scale political action' (A. Huxley, *Grey Eminence. A Study in Religion and Politics*, 1941).

Even within the relatively narrow compass of internal policy, experience confirms the truth of this statement. It applies all the more to foreign policy and to schemes for establishing order on a planetary scale. If based on such rational and not on emotional grounds, scepticism and reserve towards blue-prints for international organisation deserve to be treated with becoming respect. Yet even such profound wisdom leads merely to resigned contemplation and, in fact, to the perpetuation of existing world conditions. Much against his will, even this most pleasant of academic types becomes a pillar—and not the weakest—of any prevailing status quo.

In other cases, the sociological roots of advocacy of foreign policy by trial and error, with the emphasis on the latter, are more evident. Karl Mannheim's merciless analysis is to the point. This approach corresponds to the group interests of the higher strata in national communities. It serves to 'legitimise their claims to leadership in the State, the *je ne sais quoi* element in politics, which can be acquired only through long experience, and which reveals itself as a rule only to those who for many generations have shared in political leadership, is intended to justify government by an aristocratic class' (*Ideology and Utopia*, 1936). In our own time, true aristocracy is wearing thin, but mimicry of aristocratic ideologies and mannerisms is a widespread form of snobbery among those of more plebeian origin.

To leave the field to the international *laissez-faire* school and to the—not so successful—advocates of improvisation would be a counsel of despair. In any case, the results of international planning can hardly be worse than the blossoms of accepted and consolidated wisdom: two world wars in one generation, and the danger of another as our constant companion. It may be legitimately expected that those who make the study of international relations their special concern will not remain content with mere analysis, but will contribute their maximum to the constructive tasks ahead. Wherever there is a thesis and antithesis, there is usually a synthesis—for those who care to look for it. The contribution which the science of international relations can make towards this end may be summed up in three key-notes: classification, criticism and construction.

CLASSIFICATION

In any type of social relations, more than one answer exists to any given problem. The remedies suggested may differ according to the intelligence and vision of their authors; or according to their personal and group interests; or according to the order of values involved; or according to the sacrifices which they demand.

In the field of international relations, plans for eternal peace are legion. They all fall, however, into relatively few patterns. Compared with the pre-United Nations period, their number has considerably shrunk. The Rights of Man pattern has been incorporated into the United Nations design. Thus, it has passed from the realm of possibilities into the reality of power politics in disguise. It has still, however, its constructive potentialities as part and parcel of the federal pattern. With the liquidation of the League of Nations, the League Reform pattern as such has become irrelevant. Some of its features still require attention under the heading of its heir and successor, the United Nations Reform pattern.

To undertake classificatory work in this field is not more amusing than corresponding work in botany or zoology. Yet it is just as necessary. The fact that this most primitive work in the realm of international relations has still to be done in the middle of the twentieth century, is only partly due to the backwardness of the social sciences as compared with the natural and normative sciences. International society is so revolutionary an environment that, at the various stages of every inter-war period, the available patterns of international organisation have to be checked for continued relevance, to be weeded out and supplemented by new patterns which have entered into contemporary discussion.

Beyond its scientific utility-value, classificatory work serves an additional purpose. It draws the necessary dividing line between the science of international planning—if this branch of international relations may be so termed—and political advocacy of any particular pattern. Classification *sine ira et studio* brings out the necessarily relativist approach of science to this task.

The tests applied in such classification are a matter of convenience. Much is to be said for distinguishing individual schemes according to the degree of integration of international society which such blue-prints postulate.

CRITICISM

Perhaps the most useful function which can be fulfilled by the science of international planning is that of criticism. It may operate on two levels. In the first place, it may take for granted the basic assumptions on which any particular pattern is based. It is part of this work to make such assumptions articulate if they are not so already. Too often, the authors of blue-prints for world order leave their assumptions shrouded in mystery, even if they themselves are not mercifully unaware of what they are. The main object of such immanent

criticism is to identify without faulting these means with faults and inherent inconsistencies. It is to suggest some suggested appropriate improvements.

With the examination of the scientific pattern, the writer passes to the stage of transcendental criticism. On this stage the writer has most to beware of himself. Nothing is so sure to lead to avert than the substitution of 'impossible' and 'utopian' for the more honest 'I disagree' and 'I don't like'. It was a revealing experience for the writer during his work as Secretary of the New Commonwealth Institute (now the London Institute of World Affairs) to see this happening. When, in 1931, the Institute set out its activities, some of the highest scientific authorities propounded that schemes for an international equity tribunal and for an international police force could not be devised in any form which would meet the criticism of experts. When such drafts were put before them, then there was either dignified silence or the real arguments came into the open. It was hard to see where they differed from those of anyone who objected to these proposals on purely political grounds. At the same time, this work was a process of self-illumination. Only gradually, the writer himself became aware of the fact that these plans were not really schemes of the type of the League Reform pattern¹ but efforts, which were too clever by half, to transform the League of Nations into an international federation. It was to the credit of Lord Davies and of the New Commonwealth Society that, once they themselves became aware of such implications of their proposals, they consistently and frankly drew the logical conclusions.

At the stage of transcendental criticism, the pattern under review must be submitted to a searching test. Is it an ideology or Utopia in the scientific meaning of these terms? According to this fruitful distinction, which Karl Mannheim has introduced into sociological terminology and which easily adapts itself to application in the international field, any pattern must be one or the other. If it is practical within the existing political, military and economic international order, it is an ideology. If, in this environment, it is unattainable, it is a Utopia, that is to say, it can be realised only by the substitution of a new order for the old.

The difference between this and the 'pre-scientific' use of these terms is that, in ordinary language, ideology may stand for any kind of 'visionary speculation' and Utopia may mean any 'ideally perfect place or state of things' (*Oxford Dictionary*). In the technical sense of these words, ideology means any idea which sustains openly or in disguise dominant power positions or sectional interests, and the

term *Utopia* applies to any scheme which, whether feasible or not, demands a fundamental change in any existing order.

Thus, until the outbreak of the French Revolution, equality of the Third Estate with the other estates of France was a Utopia. It could not be achieved in an absolutist State with a feudal social and economic system. It is immaterial whether the transformation takes place by way of revolution, as happened in France, or, as in Great Britain, by consent. The essential point is whether an ideal can be realised within the existing social framework or whether it requires the transformation of such an order into a new system. Or to choose an example from the field of international relations, any pattern which presupposes an international community in the strict sense of the word is Utopian in any system of power politics, however skilfully it may be disguised. It either leaves the basic structure unaffected, and then it is an ideology, or it fulfils its real purpose. Then it replaces the order with which it is fundamentally incompatible.

Awareness of this dichotomy acts as a necessary safeguard against uncritical acceptance of the principle of gradualness, however comfortable it may be. Faced with the formidable obstacles which obstruct the transformation of international society into an international community, a number of circuitous ways to this goal have at various times been recommended. If we develop the habits of friendly and peaceful international co-operation, it is said, and slowly but surely accustom nations to such laudable practices, then, one day, we shall wake up in an international community. Unfortunately, this argument overlooks the fact that in a world in which the law of concentration of power works with ever increasing momentum, clashes of sectional interests do not allow for any peaceful interlude of sufficient duration. Before such well-meant counsels of patience can, like rain on rock, make their effects felt, an inter-war era comes to its appointed end, and good resolutions have to be adjourned until the next post-war period. Similarly, the hope that an extension here, there and, ultimately, everywhere of functional international co-operation will lead to a gradual drainage of State independence is hardly borne out by experience. The reservations made by all world powers regarding the competences of universal organisations even in merely technical fields, and the psychopathically cautious attitude taken by the States of the Eastern *bloc* towards even the most harmless form of international co-operation, demonstrate the illusory character of this approach. Such 'progress' as there is results from the operation of the law of concentration of power within each of the halves of our bi-polarised world. The test is the degree of international integration between these two halves. It could hardly be more insignificant than

it is. In the few places where the two worlds do meet, communication is as difficult as it is ever likely to be in any inter-planetary conference *à la* Jules Verne or H. G. Wells.

The most difficult and responsible task of transcendental criticism is to judge whether any scheme for international order is feasible. It is only too easy for the specialist to succumb to temptation and to put forward his own personal views on the desirability or undesirability of any particular scheme under the guise of professional criticism. The remedy does not lie in the conceited pretence that the scientist has no views or prejudices of his own. On the contrary, he must make such impediments to his objectivity articulate to himself and resolutely discard such extraneous considerations. If he fails to do this he commits two unforgivable sins: sacrifice of intellect and prostitution of integrity.

A sociological approach to problems of international planning may assist international planners in finding relevant criteria of transcendental criticism. Here the tasks of two related, and still equally embryonic, sciences, those of international planning and of international legislation, overlap. The one is concerned with the geographical and functional optimum frontiers of any particular plan for world order, and the other with finding the optimum that, at any time, exists for advancing the rule of international law.

The factors which condition international law and organisation may be termed field-determining agencies. Three of these agencies may claim to be of special significance: the degree of integration of international society or of any of its segments; the measure of structural uniformity of States, and the value of their ethical common denominator. A few examples may serve to illustrate both wisdom and folly in the field of international planning.

The Integration of International Society. The federal pattern is the most clear-cut alternative to power politics. On a world scale, it is a possible answer to the global activities of the 'Great Irresponsibles' (Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, 1939) and to the scourge of war. Its object is the transformation of the single activity area of international power politics into a well-ordered world community. The federal pattern is commensurate with the objective integration of international society into a world society. The only question is whether, subjectively, integration has kept pace with the objective integration of international society into one world society for purposes of peace and war. Taking into account the fact that, even at the time of greatest unity, the world powers refused to subordinate themselves on the decisive issues to the world law of the United Nations, the answer must be in the negative. Thus, it would

be redundant to speculate on any of the intricate problems which would still have to be solved, even if such basic willingness existed—for example : fair representation, differences in political and economic structure, or ideological incompatibilities.

The pattern of non-universal federation in present-day world politics presents still less of a problem. In relation to the overriding issue of world power politics *versus* world community, proposals for federations inside either of the world's two halves are irrelevant. In other respects, such federations may be highly beneficial. They may even contribute to a more stable equilibrium between East and West. They however, leave unaffected the character of present-day world politics. It is still a system of power politics in disguise.

Structural Uniformity. Some of the patterns of international order either take for granted a structural uniformity of States which does not exist or else they postulate a degree of uniformity which, in our time, it is practically impossible to attain. Drafts of Universal Bills of the Rights of Man conveniently illustrate this type of meta-scientific thinking. The authors of such blue-prints either uncritically take at their face-value the democratic façades of totalitarian States or charitably assume that such States simply cannot resist the temptation of democratic siren-calls; that, in due course, they will sign on the dotted line and, thereafter, they will without demur live up to the standards set by the would-be world legislators. Anything else apart, they have overlooked one decisive point. They are forced to base their Bills either on the Good Faith or Bad Faith patterns. The result is much the same.

In the former case, they rely on all participant States, of their own free will, to honour their pledged word. Then it is as easy to implement such a Bill of Human Rights as it is to implement the Potsdam Agreement. In the latter case, the triumphant answer is that, by means of machinery for international investigation and sanctions, care has been taken to prevent States not living up to their obligations under the proposed Bill of Rights. Then, however, reality reasserts itself with a jerk. States which only sham respect for human rights simply refuse to become parties to the treaty. At the point when a bill based on the Good Faith pattern breaks down, and one founded on the Bad Faith pattern remains inoperative, the ultimate misconception emerges. In a system of power politics in disguise, universal Bills of Human Rights are typical illustrations of the One Way pattern. They are attempts to reach by way of a short-cut objects which require a much more far-reaching transformation of international society than their authors would have us believe.

The Rights of Man pattern requires both a greater degree of international integration and of structural uniformity of States than exists, on a world scale, in the mid-twentieth century. It is one of the standard means of determining the political and social contents of a federation. In this context, it may successfully fulfil this function. In a confederation such as the United Nations, which is based on the principle of heterogeneous universality, the Rights of Man pattern either remains optional or it degenerates into an ideological weapon in the contest of the world powers. In the post-1945 period, it has been the fate of these drafts to have suffered both these enemies simultaneously.

Within each of the world's two halves, the prospects for this pattern are much brighter. Nothing prevents the Soviet Union and like-minded States from concluding with each other treaties for the protection of those human rights which they care to guarantee to their serfs. For this purpose, the States in the Soviet orbit form an international society of sufficient integration. Lack of formal federation is replaced by highly effective co-ordination through the Cominform, military and economic *Gleichschaltung* and last, but not least, by the almighty secret police. Structural uniformity, too, exists to a much greater extent than anywhere else in the world.

Similarly, it would be in the power of the United States to induce her weaker brethren in the Western Hemisphere to make a reality of Article 29 of the Charter of the Organisation of American States of 1948 and to embody legal obligations for the protection of human rights in an effective international convention. United States hegemony would provide a possible substitute for actual federation. In Western Europe, the situation would be still more favourable. With the exception of the Iberian Peninsula, such a treaty would be primarily of a declaratory character. The States of Western Europe and of Scandinavia are united in their faith in the rule of law in the traditional Western sense and in the freedom of the individual. In this instance, such a treaty could draw additional strength from being consonant with the third of the field-determining agencies. All these States share an extensive fund of common spiritual and ethical values.

The Ethical Common Denominator. Even in a system of pure power politics, an ethical minimum is taken for granted in international relations and, ultimately, international law rests on this foundation. Every State considers itself to be entitled to expect that every other State will, in good faith, carry out its obligations under international customary law and the treaties to which it is a party. The more ambitious any scheme for a new international order an

for the development of international law, the more heavily it taxes faith in the pledged word.

In the relations inside the Western and Eastern worlds, the hegemonial position of each of the super-powers, common ideologies and fears of the intentions of the other camp forge bonds which are likely to stand considerable pressure. In the relations between the two worlds, the value of their ethical common denominator becomes of overriding importance; for, ultimately, war is the only sanction with which either side can visit the other's bad faith. Short of this extreme step, even small satellite States can make a mockery of solemnly concluded peace treaties or, as Albania has proved, simultaneously of the United Kingdom, the International Court of Justice and of the United Nations.

How low, in the relations between the United States and the Soviet Union, American statesmen estimate the ethical common denominator to be becomes apparent from a statement by Secretary Acheson of February 8, 1950: 'We have seen that agreements reached with the Soviet Government are useful when those agreements register the facts or a situation which exists and that they are not useful when they are merely agreements which do not register the existing facts.' In his *Annual Report to Congress on the Work of the United Nations* (May 22, 1950), President Truman made this analysis his own: 'Our experiences show that agreements with the Soviet Union and its satellites are valid only as, and when, they record existing situations of fact.' A long list of broken treaties and pledges given at the highest level could be cited in support of this thesis.

It is only fair to qualify the statements of President Truman and Mr. Acheson in one respect. In the field of pure business transactions, the Soviet Union has striven hard to live up to the highest standards of capitalist rectitude in meeting her obligations. There is only one major exception. This was the high-handed rupture of commercial relations with Yugoslavia in the form of economic 'sanctions', and was dictated by overriding political considerations. Yet, again, the objective situation is somewhat irrelevant.

It is decisive that a power such as the United States, with her attachment to international law and her own high standards in fulfilling international obligations, should have drawn such a negative conclusion from her treaty relations with the Soviet Union. Her views are shared by most States in the non-Soviet world. The consequence is that none of these powers is any longer prepared to contemplate any international scheme which largely relies on the moral credit of the Soviet Union and of any of her satellites. This,

however, is the only type of agreement that might conceivably lead beyond the Charter of the United Nations.

For this reason alone, any ambitious schemes on a world scale as, for instance, plans for the international control of atomic energy, are condemned to the wastepaper basket. The distrust of the West in the good faith of the Soviet Union is such that the Western powers would no longer be content even with the belated Soviet concession of periodic inspection. They would have to insist on no amount of interference with internal affairs of participant States which the Soviet Union would be bound to reject. As, with some justification, Soviet critics have pointed out, the American proposals amount to the suggestion of establishing a world State for the limited purpose of controlling atomic energy. In view of the low ethical common denominator between West and East, schemes to the international control of atomic energy must necessarily be so ruled. Thus, inevitably, they, too, merge into the fatal One-Way pattern.

If all the existing stocks of atomic bombs were destroyed, and an international nuclear agency were established, no participant States could be sure of the ultimate scope of such a monopoly. With the progress of research at the present rate, nuclear energy is likely soon to be produced from many more raw materials than, at present, yield this enigmatic energy. Then, this monopoly would ultimately cover and control most of the key positions of national economies. It may well be that this is the price of world peace. The experiences with Benelux and the Schuman Plan are not, however, encouraging precedents. In these instances, the problem of closer integration is not even complicated by the East-West rift. Yet, even so, functional federalism hardly celebrates orgies of achievement. Let it be assumed, however, that, in the interest of world peace, the men in the Kremlin suddenly became enamoured with the Baruch Plan. This scheme would still leave unsolved problems as big as those it might settle.

There are still all the other means of mass destruction, such as chemical and biological warfare. It is true, they are outlawed by the Geneva Protocol of 1925. Yet, in anticipation of a possible breach of this Treaty by potential enemies, all powers are busily engaged in research and production of these nefarious weapons. To cover all these contingencies, the world would require an international agency with monopolies in these fields, too. Again, the One-Way pattern proves to be the federal pattern in disguise. The federal world State is the only alternative to world power politics. This counsel of perfection merely suffers from the minor deficiency that it is not acceptable to the world powers.

CONSTRUCTION

The reader, who has been patient enough to work his way through the depressing analyses of power politics and of power politics in disguise, and is now deprived of the last few hopes which he may still have cherished, may justly inquire: Is this all? Is there no constructive way out of the impasse?

In the first place, he should not minimise the positive value of disillusionment. Is it so desirable to be one of the dupes of facile slogans? Is he so eager to be misled—like his fathers, who first put their faith into international arbitration and the development of international law as an alternative to power politics and then trusted the League of Nations, disarmament, world economic conferences, and all that to save them from another world war? At the worst, does he not realise the position of strength held by anyone who is without fear or hope? It is the wisest way of facing as grim a reality as ours. Yet this is not all. The science of international planning can do better.

The analysis of international relations of the past and present in terms of society relations of an extreme type itself conveys a message of hope. Human relations on any level can be conducted in the spirit of a society or community. Power politics and power politics in disguise need not be the eternal fate of mankind. The alternative to anarchy is government, and the alternative to an international society is an international community. It is beyond the power of research and scientific planning to generate the forces on which the establishment of a true world order depends. It is, however, its legitimate concern to work out the conditions on which the transformation of our system of power politics in disguise into a true international community depends. In this way, the science of international planning can materially assist in counterbalancing the destructive effect of unpleasant truth on the weak in spirit: cynicism, the impotent reaction of faithless man to overpowering reality.

The constructive suggestions which follow should not be misunderstood as a sketch of *the* road to certain salvation. They are thrown out as a challenge to others to do better. Subject to correction, it is submitted with due diffidence that any design for world peace must fulfil three general, and seven particular conditions.

The general conditions are:

First, the scheme must so far subordinate and limit power politics that the international order can prevail.

Secondly, in an age in which, of necessity, open war between the world powers means world war, such a design must at least aim at functional universality.

Thirdly, the essence of success lies in aiming not at the maximum, but at the minimum of change that is required for the purpose.

The particulars are more controversial and are set out merely as a basis for discussion :

1. The members of the international community must be safeguarded effectively against interference with any rights which are guaranteed to them, or left with them, by the community.

2. For its own purposes, the international community requires adequate governmental and executive powers.

3. Provision for the judicial settlement of international disputes between members of the international community is not enough. In order to be able continuously to adapt international relations to the ever-changing requirements of a dynamic world, international legislative or quasi-legislative organs with discretionary power are indispensable.

4. The members of the international community must hand over to the international community, and refrain from producing, any armaments the retention of which might seriously hamper the international community in prevailing over any individual member or any likely combination among them.

5. The degree of control of the international community over its members, and the competences of the international community, must depend on one test only : the minimum of functions and interference which is compatible with the proper working of the community system.

6. Without some measure of direct control over the citizens of the member States, the international community cannot create loyalties strong enough to counterbalance existing national or other sectional loyalties.

7. As distinct from a society, a community can be based only on the principle of consent. While the unanimity principle would render it impotent, the principles of equality and majority are compatible with a far-reaching protection of minorities and of individual member States in spheres which, from the point of view of the international community, are unessential.

It may be held that to picture world order in such terms indicates an unhealthy inclination towards perfectionism. Did not President Roosevelt sound the warning against this failing : ' Perfectionism, no less than isolationism or imperialism or power politics, may obstruct the paths to international peace ' (Message to Congress on the State of the Union, January 6, 1945) ?

In the first place, there is little danger of obstructing a world which is eager to tread the paths to peace. The truth is that the world is massing its populace on the highroads to war, and the byways to peace are deserted. More important, it is futile to set out an objective and, at the same time, to refuse to contemplate the means by which it can be attained. To argue that the realisation of such a design is unattainable is only another way of saying that power politics in, or without, disguise is to remain for ever the lot of mankind.

THE UNITED NATIONS REFORM PATTERN

'Let us not in our impatience and unkindness condemn the weapons that we now possess of the United Nations Organisation.' Secretary of State Marshall, Foreign Affairs Committee, House of Representatives, May 6, 1948

THE major assumption of the United Nations Reform pattern is that it is worth reforming the United Nations. Merely to raise the question is likely to make anyone shudder who regards the United Nations as one of the taboos of our age and has elevated it to the rank of one of our mortal gods. Yet, if there were any case for preserving the United Nations, its devotees ought to be the first to welcome such an inquiry. If not, sooner or later, such censorship of the mind would in any case break down.

The existence of the United Nations multiplies, for good and evil—the points of contact between the powers. A return to the Old Diplomacy might encourage the resumption of the virtuous habit of understating, rather than overstating, existing international tensions. It might give fewer opportunities to practise the kind of gutter diplomacy which has, too frequently, dominated the scene in the chief organs of the United Nations. Against this, it may be argued that, with or without the United Nations, campaigns of 'peace' and 'truth' would still be waged with all their fury. The liquidation of the United Nations would hardly put an end to the radio war between East and West or to other forms of mutual denigration.

This view could draw colourful support from the activities in the last few years of Allied-controlled radio stations and newspapers in Germany and Austria. It is hard to imagine anything more repellant than the tone of these agencies, especially those inspired by the Soviet Union and the United States. The proletarianisation of diplomatic manners appears to be a symptom of the intrusion of the lower classes into the diplomatic game and of the deterioration in standards which follows inevitably from the intended appeal of such statements to the compact majority of Eastern and Western mass societies.

It may also be feared that the existence of the United Nations lulls public opinion into a false sense of security and diverts attention from the chief danger to world peace, the growing trend towards the consolidation of the international oligarchy. In fact, however, public

opinion could hardly be more apathetic to the United Nations than it is already and be more apprehensive of the spectre of a Third World War.

Finally, it may be thought that the continuous spectacle of two-level diplomacy is likely to spread cynicism among the few who still follow the games played at New York and Geneva. It is doubtful whether a return to the Old Diplomacy would substantially alter the position. The tendency to fall a victim to the fallacy of cynicism has deeper causes. In the West, the Christian and humanist heritage is wearing thin. In the East, Man is the measure of all things to the oligarchies of the *Politbureau* and of the Cominform. So long as these tyrannies last, it is a minor matter whether any, or which, faith inspires their seifs. Cynicism in the present-day world is but the outward appearance of the deepest spiritual *malaise* of our age: the drift towards nihilism.

Compared with possible reasons for the liquidation of the United Nations, weightier arguments appear to speak in favour of the maintenance of this international apparatus.

However much the Soviet Union and her satellites may decry the achievements of the West, they are thoroughly impressed by them and full of inferiority complexes. The Communist rulers are doing their best to immunise their scouts in the Western world against its temptations. Seeing, however, still is believing. Every one of them who returns home carries a doubt with him, and doubt is the first step towards independent thinking. It is hard to see why, by its own efforts, the West should assist the Communist jailers in making the seclusion of their nations still more impregnable.

On occasion, the multiplicity of contacts which the United Nations provides may offer opportunities for lessening friction between East and West. The unanimity on this point of American statesmen from General Marshall downwards is impressive:

'The United Nations is a forum in which many of the questions involving the Soviet Union can be negotiated. Under the auspices of the United Nations we are meeting with the Soviet Union in hundreds of meetings each year. It would be unfortunate to break off the relationship' (Testimony before the Foreign Affairs Committee of the House of Representatives, May 5, 1948).

If, within the next few years, it were possible to avoid a Third World War, then the constructive potentialities which are inherent in the existence of these meeting-places would be likely to become even more important. By then, the Western world ought to have succeeded in transforming potential into actual supremacy. It would then be able to negotiate from strength, the only position from which

negotiation is possible with power-drunk, but shrewd despots. In such a situation, the West could even afford to sit back in confident alertness and wait until the Eastern States succumbed to the fatal diseases of all totalitarianism: retrogression for lack of the vitamin of intellectual freedom, and progress of the cancer of corruption in any totalitarian bureaucracy.¹

Moreover, the stimulating effect of the presence of the red gadflies on the international scene should be gratefully acknowledged. Without the Communist challenge, there might never have been an International Labour Organisation, Marshall Aid or Truman's Point Four Programme. Now Western statesmen have to be constantly on guard against providing gratuitous propaganda material to Communism. They are forced to reflect whether their inertia makes another country ripe for Bolshevism. Such a spur is bound to benefit the objects of their ministerial care.

Similarly, the need to proclaim one's own superior standards has, at least sometimes, the effect of actually raising such standards to the propagated level. It is impossible to prove this thesis. Yet, it is at least arguable that, without constant Communist harping at racial discrimination in the United States, President Truman's Committee on Civil Rights might never have seen the light of day or not have produced so progressive a report (*To Secure These Rights*, 1947), and that the colonial stewardship of the Western powers might still be less conscientious than it actually is. Admittedly, even without the United Nations, Communist propaganda would be able to point to these stains on the shining armour of the West. Nevertheless, the existence of the General Assembly and of the other principal organs of the United Nations fulfils the highly meritorious function of shaming powers into action.

In this eulogy, the unifying effect of the Eastern bloc on the Western world deserves also to be duly emphasised. In 1945, a distinguished American scholar still thought it necessary to affirm that 'Americans are human' (C. Egleton, *The Forces That Shape Our Future*, 1945). Faced with the greater evil that threatens from the East, Europeans are today fully prepared to accept this modest claim. They may even tend to err in the opposite direction and to expect more than they should from the 'superhuman' giant on the other side of the Atlantic. Anglo-French and Franco-German animosities of other days—not so long ago—have also shrunk into insignificance.

Even without the United Nations, all these miracles might have happened. Yet, at every meeting of the United Nations in which

the States of the Eastern *bloc* make an exhibition of themselves, they perform the inestimable service of welding the nations of the West closer together. Let it be gratefully acknowledged: 'If you remove the Soviet group, you lose a great factor in uniting and maintaining a free world' (Mr. Austin, May 3, 1950). When the Western victims of Soviet invective wince under the lashes of M. Vishinsky's or M. Malik's tongue, they should be comforted by the thought that they suffer stoutly in the service of a noble task.

Furthermore, the East-West conflict is the basic, but not the only issue of world politics. The very fact that it overshadows all other differences and tensions, tends to deflate these and to reduce them to their proper perspective. The Eastern *bloc* cannot prevent the Western nations from making use of the many optional agencies which the United Nations provides, or from deriving the maximum benefit from the administrative services and functional agencies of the United Nations. They are waiting to be developed into the overall international organisation of the non-Soviet world. Apart from the Security Council, none of the organs of the United Nations nor any of the specialised agencies is stultified by the veto. If the United Nations did not exist, something very like it would have to be invented.

Lastly, world government requires an efficient international civil service. A great deal of the present work that is performed by the officers of the United Nations and of specialised agencies is in itself waste of time and effort. It is, however, valuable as practical training for the real task ahead. The existence of such an international service creates traditions and allows for the development of administrative techniques which, at a more propitious hour, may be in greater demand. Compared with the gigantic amounts that all nations spend on destructive purposes, this minute investment in peace need not be grudged.

REVISION OF BEHAVIOUR AND DE FACTO REVISION OF THE CHARTER

With all its failings, the United Nations has created a place for itself in international organisation which, in the event of its demise, would leave a serious vacuum. Yet, it is still questionable whether any revision of the United Nations Charter is needed. Just as the League of Nations could have been made to work with the goodwill of the greater powers, so a sensible application of the Charter can produce all the results that might conceivably be expected from its formal revision. Conversely, it may be held that, without such change of heart, none of the proposed improvements in the machinery of the

United Nations would affect the exercise of the veto on any of the other.

In discussions with the permanent members of the Security Council and in a Memorandum submitted to the Security Council, the United Nations (June 6, 1950) Mr. Trygve Lie, the Secretary-General of the United Nations, proposed a four-point plan for strengthening the United Nations without formal revision of the Charter:

- (1) Periodic special sessions at least every two years of the Security Council at a ministerial level for the purpose of consultation among the five permanent members of the Security Council, and agreement on limitations of the use of the veto in the Security Council;
- (2) resumption of the meetings of the United Nations Commission on Atomic Energy;
- (3) resumption of the meetings of the United Nations Commission for Conventional Armaments;
- (4) new efforts to reach agreement on the establishment and use of the security forces at the disposal of the Security Council;
- (5) admission to the United Nations of the fourteen applicants for membership;
- (6) an active programme of technical assistance and economic development under United Nations auspices;
- (7) more vigorous use of the United Nations specialised agencies;
- (8) development of human rights and fundamental freedoms;
- (9) use of the United Nations to promote the advancement of peoples in dependent areas;
- (10) use of the United Nations to speed up the development of international law towards an 'eventual world law for a universal world society'.

These suggestions were in line with the attempts made since the San Francisco Conference for a de facto revision of the Charter. In reply to a questionnaire on the exercise of the veto, submitted to the four Sponsoring Powers by a sub-committee of the Conference Committee on the Security Council, the Sponsoring Powers issued an interpretative statement (June 7, 1945—UNCIO, *Documents*, vol. II, p. 710), to which France, too, adhered. The only concession made by the Sponsoring Powers to requests for the limitation of the veto was the definition of some of the procedural matters which were not to be subject to the veto. In particular, it was made clear that, by exercising a double veto, a permanent member could not prevent consideration and discussion by the Security Council of a dispute brought to

its attention under Article 35 of the Charter (Chapter VIII (A) (2) of the Dumbarton Oaks Proposals).

The legal significance of the Statement issued by the Sponsoring Powers is doubtful. Only the Conference as such would have been entitled to interpret the Charter authoritatively. It is possible to regard the statement merely as preparatory material which may be used for the interpretation of Article 27 of the Charter. It is also arguable that the permanent members of the Security Council intended to undertake legal commitments towards each other to abide by this self-denying ordinance. In order to be binding, such an agreement does not require any solemn form. The Yalta and Potsdam Agreements are other examples from the same period of informal, but legally binding undertakings. To judge by the subsequent strict adherence to the Statement by the permanent members in the practice of the Security Council, the second view appears to be more consonant with the original intentions of the parties to this Statement.

During the First Session of the General Assembly (1946), Mr. Bevin proposed a 'code of conduct' for the permanent members of the Security Council. He suggested that, prior to the exercise of the veto by any of the permanent members, they should consult with each other, that, except in vital matters, the veto should not be used; that it should not be used to express disagreement with the too limited character of a resolution of the Security Council, that, before a matter likely to lead to a veto was raised in the Council, procedures of consultation and arbitration should be applied, that agreement should be reached on the habitual bones of contention, that is to say, a definition of the terms 'dispute' and 'situation' in the meaning of the Charter, and, finally, that absence or abstention of a permanent member should not be interpreted as the exercise of the veto. The Soviet Union refused, however, to accept any such gentlemen's agreement.

In fact, but with reservations regarding such action forming any precedent, the representative of the Soviet Union in the Security Council has indicated on a number of occasions that his abstention was not to be interpreted as the exercise of the veto. By 1947, this practice, which was also followed by the other permanent members of the Security Council, had sufficiently hardened to allow the President of the Security Council to declare from the chair (August 1, 1947): 'It is now jurisprudence in the Security Council—and the interpretation accepted for a long time—that an abstention is not considered a veto, and the concurrent votes of the permanent members mean the votes of the permanent members who participate in the voting.'

In accordance with a recommendation of the General Assembly

adopted at its Third Session (April 14, 1949), the permanent members agreed, too, in the following October, on the principle of prior consultation before important decisions. Numerous attempts made to induce the Soviet Union to agree to a suspension of the veto regarding the admission of new members failed, however, to make any impact on Soviet conservatism regarding the work of San Francisco. In the words of M. Gromyko at the meeting of the Security Council on May 21, 1948, 'the Delegation of the Soviet Union will not digress one single iota from the obligations assumed under the San Francisco Declaration', that is to say, the joint Statement of the Sponsoring Powers of June 7, 1945.

The Little Assembly was another vain attempt to overcome Soviet insistence on her rights under the Charter. At the Second Session of the General Assembly (1947), Secretary Marshall proposed the creation of a standing committee of all the members of the General Assembly, to be known as the Interim Committee on Peace and Security. Experimentally, the Committee was to be established for a period of one year and to act as a kind of miniature General Assembly in permanent session. In making this proposal, Secretary Marshall took up an idea which, in December, 1946, had first been put before the General Assembly by the Netherlands. The Soviet *bloc* contested the legality of the American proposal, but fought shy of the proposal to request the International Court of Justice for an advisory opinion on its compatibility with the Charter.

On November 13, 1947, the General Assembly adopted the American proposal in substance. In the title, the words 'on Peace and Security' were omitted. The character of the Interim Committee as a 'subsidiary organ of the General Assembly' was underlined. The Committee was authorised to consider and report with its conclusions on matters referred to it by the General Assembly; to fulfil the same function with regard to international disputes proposed for inclusion in the agenda of the General Assembly by any member of the United Nations or referred to the General Assembly by the Security Council. The Interim Committee was to concern itself with such disputes only if it thought them to be 'both important and requiring preliminary study'. Among the other functions entrusted to the Committee, its competence to conduct investigations and to appoint commissions of enquiry deserves to be mentioned. The members of the Eastern *bloc* refused to serve on the Committee.

The snag about this brainwave was that the General Assembly could not delegate to any other body greater authority than it had itself. Apart from here irrelevant exceptions, the General Assembly remained a consultative organ of the United Nations. The Interim

Committee, therefore, could not be endowed with any jurisdiction surpassing that of its parent body. A review of its work suggests that the Committee—prolonged from one General Assembly to the next and, since 1949, for an indefinite period—has not performed any tasks which, in its absence, the General Assembly could not itself have undertaken equally well. The quasi-permanency of the General Assembly has been attained, but at the price of considerable duplication of work and increase in the expenses of the members of the United Nations who serve on the Interim Committee.

At the Fifth Session of the General Assembly in 1950 the *de facto* revision of the Charter was carried a big step further. The return of M. Malik to the Security Council threw into relief the constitutional incapacity of the fully manned Security Council to act in any major conflict between East and West. Recognition of this situation was the mainspring of the Acheson Security Plan. In the form in which it was adopted at the Fifth Session of the General Assembly on November 3, 1950, it provided for the contingency that 'the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression'.

If, in such an emergency, the General Assembly should not be in session, the General Assembly may be convoked within twenty-four hours. Such an emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the members of the United Nations. It then has to consider the matter before it immediately 'with a view to making appropriate recommendations to members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force, when necessary, to maintain or restore international peace and security'.

In addition, the General Assembly established a Peace Observation Commission, composed of fourteen members. At the urgent request of the Soviet Union, the General Assembly included a representative of the Soviet Union among the elected States (China, Colombia, Czechoslovakia, France, India, Iraq, Israel, New Zealand, Sweden, Pakistan, the Soviet Union, the United Kingdom, the United States and Uruguay). Its purpose is to observe and report on the situation in any area where there exists international tension, the continuance of which is likely to endanger the maintenance of international peace and security. 'Upon the invitation or with the consent of the State into whose territory the Commission would go', the General Assembly, the Little Assembly when the General

Assembly is not in session and the Security Council must use the Commission

Finally, the General Assembly recommended to the members of the United Nations that

Each member must unit with a its national force of observations so trained, organised and equipped that they could be made available, in accordance with their respective institutional processes, for service as a United Nations unit or units upon request and order by the Security Council or General Assembly with a individual or the use of such elements in exercise of the right of individual or collective self-defence recognised in Article 51 of the Charter.

These measures are to be co-ordinated by a Collective Measures Committee, also consisting of representatives of fourteen member States (Australia, Belgium, Brazil, Burma, Canada, Egypt, France, Mexico, the Philippines, Turkey, the United Kingdom, the United States, Venezuela and Yugoslavia).

The Acheson Security Plan is a confession that the security system envisaged by the Charter of the United Nations has failed. The Security Council was meant to be the guardian of world peace, but the division of the world in two antagonistic halves and the stereotyped use of the Soviet veto condemns the Security Council to inaction. In view of the impossibility of a *de jure* revision of the Charter against the will of the Soviet Union, the non-Soviet world was faced with the alternative of letting the United Nations become a laughing stock or of circumventing the Soviet veto.

The General Assembly was the only organ of the United Nations which could be made to nullify Soviet obstruction. In this body the Eastern bloc can muster only an insignificant minority. The cumbersome character of the General Assembly and its merely advisory character are the drawbacks of this solution. The first can be overcome by a practice which reduces the General Assembly to more or less automatic ratification of the recommendations made by the Peace Observation Commission and by the Collective Measures Committee. If members accustom themselves to accept without delay the recommendations of the General Assembly in matters affecting world peace, the second obstacle, too, can be overcome.

The adoption of the Acheson Security Plan by the General Assembly amounts to a de facto revision of the United Nations Charter, a phenomenon familiar from the practice of the League of Nations.³ Until the adoption of the Acheson Plan (again leaving aside the freak of the Korean War), the United Nations was incapable

* See below, p. 781 *et seq.*

See above, p. 308 et seq.

of making its weight felt in any major conflict between East and West. In future, the Organisation will be at the disposal of any majority of members of the United Nations in any such conflict. Being neither able to forestall a major war between East and West nor any longer condemned to sterile inactivity, the United Nations has been reshaped to provide the spiritual and ideological armour of the West whenever the imperialist expansion of the Soviet *bloc* should force an armed showdown.

Even in the eventuality of a Third World War the representatives of the Eastern *bloc* could still make out a good case for their unhindered access to all the organs of the United Nations.

In accordance with the Charter (Paragraph 2 of Article 105), representatives of the members of the United Nations and officials of the Organisation enjoy in the territory of each of the members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation. Beyond this, under the Convention on the Privileges and Immunities of the United Nations (February 13, 1946), any member which has acceded to the Convention is bound to give still more precisely defined facilities to all the representatives of other members in the principal and subsidiary organs of the United Nations. While exercising their functions, and during their journey to and from the place of meeting, they enjoy immunity from personal arrest or detention and from seizure of their personal baggage, complete immunity from legal process, inviolability for all papers and documents; the right to use codes and to receive papers or correspondence by courier or in sealed bags, exemption from immigration restrictions, aliens registration and national service obligations; the same facilities regarding currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions, and, by and large, the same immunities and facilities regarding their personal baggage as are accorded to diplomatic envoys (Section 11). By representatives are understood all delegates, deputy delegates, advisers, technical experts and secretaries of delegations (Section 16).

The Convention remains in force 'as between the United Nations and every member which has deposited an instrument of accession for so long as that member remains a member of the United Nations, or until a revised general convention has been approved by the General Assembly and that member has become a party to this revised convention' (Section 35). By June 30, 1950, thirty-seven members, including France and the United Kingdom, had acceded to the Convention. With the exception of Poland, none of the members of the Soviet *bloc* is a party to the Convention. As it has no

reciprocity clause, the grant of such privileges and immunities to delegates of one member does not depend on the grant of corresponding privileges by other members. Under the Convention on the Privileges and Immunities of the Specialised Agencies (November 21, 1947), the same rights are granted to representatives of members and officials of these agencies.

Under the Headquarters Agreement between the United Nations and the United States (June 26, 1947), the United States must 'not impose any impediments to transit to or from the headquarters district' of representatives of members or officials of the United Nations; experts performing missions for the United Nations or specialised agencies; representatives of the press, or of radio, film or other information agencies who, after consultation with the United States, have been accredited by the United Nations or by any of the specialised agencies; representatives of non-governmental organisations recognised by the United Nations for the purpose of consultation with the Economic and Social Council, and other persons invited on official business to the headquarters district by the United Nations or any specialised agency (Section 11). These non-governmental organisations include the Communist-controlled World Federation of Trade Unions. It is expressly provided in Section 12 that Section 11 'shall be applicable irrespective of the relations existing between the Governments of the persons referred to in that section and the Government of the United States'. According to Section 24, the Agreement ceases to be in force only if the seat of the United Nations is removed from the territory of the United States.

It should, however, be remembered that these conventions were concluded for the implementation of Article 105 of the Charter. Article 105, and any of these Conventions, must, therefore, be read subject to the reservation that they do not impair the inherent right of individual or collective self-defence in case of armed attack against a member State (Article 51 of the Charter). Thus, if any instant and overwhelming necessity for taking preventive action against any threatened abuse of such privileges should arise, or any such breach should actually occur, each member would be entitled to put an end to such practices.

It may also be recalled that such privileges as are granted under these instruments are limited to the territories of member States and do not extend to the high seas or to the air space above them. It may, therefore, be held that these treaties do not affect the traditional rules of sea warfare, including those of visit, search and of arrest of enemy nationals. The counter-argument is possible that if members have undertaken such duties with respect to their own territories, the

same applies, *a fortiori*, to the high seas, where, in derogation from the freedom of the seas, belligerents exercise merely a limited and exceptional jurisdiction. In this case, the policing of the seas for this particular purpose may have to be left with the navies of non-member States whom the Eastern *bloc* so providentially barred from admission to membership. They are still free to claim: *Pacta tertiis nec nocent nec prosunt* (treaties do not impose any obligations, nor confer any benefits, on third parties).

DE JURE REVISION OF THE CHARTER

To put the prospects mildly, revision of behaviour on the part of the Eastern *bloc* is unlikely. De facto revision of the Charter is somewhat untidy and still leaves an obstructionist minority with plenty of opportunities to throw spanners into the works of the United Nations machinery. Thus, it remains to investigate the possibilities of the de jure revision of the Charter.

In Chapter XVIII, the Charter provides for two different procedures of revision. The ordinary method is adoption of an amendment by two-thirds of the members of the General Assembly. This is, however, merely the first step. Any such amendment only comes into force, but then for all members, if it is ratified by two-thirds of the members of the United Nations, including all the permanent members of the Security Council (Article 108).

In addition, machinery has been created for 'reviewing' the Charter as a whole. This function is to be fulfilled by a General Conference of the members of the United Nations. If, by a two-thirds vote of the members, the General Assembly and, by a vote of any seven members, the Security Council decide in favour of calling such a Conference, it has to be convened. In the General Conference, each member has one vote, and alterations of the Charter must be recommended by a two-thirds vote of the Conference.

Again, such recommendations only come into effect when ratified by two-thirds of the members of the United Nations, including all the permanent members of the Security Council. If, by the tenth Session of the General Assembly, no such Conference has been held, the proposal to hold it shall be put on the agenda of that session. In this case, a simple majority vote in the General Assembly, together with a concurring vote of any seven members of the Security Council, is sufficient to ensure the convening of the General Conference (Article 109).

Article 108 of the Charter corresponds to Chapter XI of the Dumbarton Oaks Proposals. There is only one difference. According

to the Dumbarton Oaks Proposals, amendments could be made by a simple majority, but it had to include the permanent members of the Security Council.

The extraordinary procedure under Article 109 was the result of a Four-Power amendment at the San Francisco Conference. The Sponsoring Powers offered this to the middle and small States to console them for having to accept, willy-nilly, the privileged position of the world powers in the United Nations design. The last paragraph of Article 109 was not contained in the original Four-Power Amendment. It was a last minute concession to Uruguay's proposal that, after ten years, amendments of the Charter should be passed by two-thirds majorities in the General Assembly and in the Security Council, but without the veto at any stage. Australia, too, took a prominent part in the small-power revolt. Yet, in its final formulation, Paragraph 3 of Article 109 presented a mere shadow victory for the under-privileged. By passive resistance, by simply refusing to ratify, any permanent member can block an amendment adopted under this paragraph—as under Article 108 and Paragraph 2 of Article 109.

So long as the present East-West rift persists, the procedure for revising the Charter with the consent of the Soviet Union—and, if her delegate should take his seat in the Security Council, of Communist China—must remain a dead letter. Revision of behaviour and de jure revision of the Charter are equally remote contingencies. Thus, anyone who would rather sacrifice the present relative universality of the collective peace system for the sake of greater effectiveness is driven to consider the possibilities of a United Nations lightened by shedding the Eastern *bloc*. The temporary walk-out policy of the Soviet Union and her satellites from the various organs of the United Nations over China created a short-lived hope of these nations themselves solving this issue for the rest of the world. Since their return, the question is again acute whether the problem of the obstinate minority can be solved by the suspension of their rights of membership or by their expulsion from the United Nations.

According to Article 5 of the Charter, the General Assembly may suspend a member upon the recommendation of the Security Council, but only if preventive or enforcement action under Chapter VII of the Charter has been taken against such a member. Without the consent of the Soviet Union, no such action can be taken against her or any of the members of the Eastern *bloc*. If a member of the United Nations should persistently violate the Principles laid down in Article 2 of the Charter, it may be expelled from the Organisation by the General Assembly upon the recommendation of the Security Council

(Article 6). Again, without the concurrence of the Soviet Union, no positive recommendation of the Security Council to this effect is possible.

Following the interpretation of the same term 'upon the recommendation of the Security Council' in Paragraph 2 of Article 4 by the International Court of Justice (Advisory Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations*—1950), the General Assembly can only act on a positive recommendation of the Security Council. Considering the history of these clauses which were meant to be the complement to the veto, little doubt exists that the same interpretation should also apply to Articles 5 and 6 of the Charter. Formally, the General Assembly would be free to ignore this Advisory Opinion and to decide on the expulsions with the required two-thirds majority of the members present and voting (Paragraph 2 of Article 18 of the Charter). An advisory opinion has no binding force and, in any case, the Opinion is only concerned with the interpretation of Article 4 of the Charter.

Whenever the obstructiveness of the Eastern bloc in the United Nations should become intolerable the General Assembly would be faced with the choice between two evils: either to ignore the Advisory Opinion of the Court and, thus, to impair the rule of law or to abide by the spirit of the Opinion and to acquiesce in the stultification of the objectives of the United Nations. Both the adoption of the Acheson Security Plan⁴ and the prolongation of the tenure of office of the Secretary-General by the Fifth General Assembly in 1950 showed which way the wind was blowing.

The form in which Mr. Trygve Lie's appointment was extended is a directly relevant precedent. In accordance with the Resolution of the First General Assembly on the Terms of Appointment of the Secretary-General (January 24, 1946), 'the same rules apply to a renewal of appointment as to an original appointment'. Under Article 97 of the Charter, the General Assembly can make such an appointment only on the recommendation of the Security Council. In 1945 there would have been little doubt that, as in the case of admission of new members, a recommendation meant only a positive recommendation. Nevertheless, in 1950, the General Assembly proceeded in the absence of any such positive recommendation—another phase in the de facto revision of the Charter.⁵

Short of the voluntary withdrawal or the expulsion of the members of the Eastern bloc in circumstances of questionable legality, any de jure revision of the Charter against the will of this minority is out

⁴ See above, p. 747 *et seq.*

⁵ See above, pp. 39 and 743 *et seq.*

of the question. Nevertheless, an exasperated majority of the members of the United Nations may ultimately be driven to take this extreme step. Then, *de jure* revision of the Charter would become a practical possibility. With this contingency in view, the concrete proposals for the *de jure* reform of the United Nations deserve some attention.

PROPOSALS FOR THE REFORM OF THE UNITED NATIONS

If the United Nations were limited to the non-Soviet world, it would probably be found that, with the threat of the Soviet *bloc* still hanging over the members of the United Nations, the need for such reforms would largely disappear. The United Nations machinery might then constitute a workable framework for the overall international organisation of the non-Soviet world. ✓

The membership problem would solve itself. The States which are agreeable to the Western world would be automatically admitted. The others would no longer even desire to join an organisation on the wrong side of the world balance of power.

It would be interesting to see the attitude, in such an eventuality, of the remaining permanent members of the Security Council towards the abolition of the veto. In his testimony before the Foreign Affairs Committee of the House of Representatives (May 5, 1948), Secretary Marshall declared that the United States was vitally interested in maintaining the veto power on matters of enforcement under Chapter VII of the Charter. While the rules of simple majority or of two-thirds majority were theoretically sound on most matters, this did not apply to enforcement measures. Under any majority rule, the United States, with 40 per cent of the world's power could be committed against her will to military action. Retention of the veto regarding enforcement measures was necessary 'for our protection'. The engagements undertaken by the parties to the Inter-American Treaty of Reciprocal Assistance of 1947 and to the North Atlantic Pact are similarly limited.⁶

It is not likely, therefore, that even in a United Nations which was cleansed of the Eastern *bloc* more could be achieved than the implementation of Mr. Bevin's proposals for a gentlemen's agreement or the elimination of the veto regarding recommendations of the Security Council for the pacific settlement of international disputes (Chapter VI of the Charter). In scope, such a revision of the

⁶ See *ibid.*, pp. 213 et seq.

Charter would correspond with the objects of the Vandenberg Resolution, adopted by the United States Senate on June 11, 1948.

Compared with the inter-war period, little has been heard in the last few years about proposals for an international equity tribunal. The idea is still mooted by the New Commonwealth Society and by some quarters of the International Law Association, but it has lost much of its topical character. In the years after the First World War, the feeling was widespread that the former Central Powers, and Italy and Japan as well, had a case in equity. The problem was how to allow for peaceful change without endangering collective security. It appeared to be a rational solution to provide simultaneously for strengthening the League organs in the sphere of revision by the establishment of an international equity tribunal, and in the field of collective security by the creation of an international police force.

How easily expert opinion on such a topic can change from one extreme to the other may be illustrated by but one example. In *Aspects of Modern International Law* (1939), Sir John Fischer Williams, a prominent British international lawyer of the inter-war period, held: 'It seems chimerical to expect that it is possible to give a tribunal consisting of a small number of individuals sufficient prestige and authority to ensure the acceptance of its decisions by a State against whose interests or apparent interests the decision will operate.' A few months later he had become a convert to the idea of an international equity tribunal (*World Order*, 1939): 'For the settlement of any dispute in which a change of legal rights is sought, let the matter be submitted to a board of five members composed of nationals of Powers strangers to the dispute. . . . Decisions of this "Equity Tribunal" should have the same value as the decisions of the Permanent Court itself.'

In the evolution of national law, the experience of quasi-legislative organs provides a relevant precedent. The edict of the Roman *practor* and the equity jurisdiction of the medieval English Chancellors were stop-gaps in historical situations in which, otherwise, the alternative might have been complete stagnation in the evolution of these legal systems. Whenever there is hesitation to indulge in experiments of full-dress legislation, a more empirical approach has its attractions.

Whereas, normally, the legislature exists for the purpose of creating abstract and general rules, the decisions of such quasi-legislative agencies are binding only between the parties, and regarding the particular case before the tribunal. Moreover, industrial arbitration has been the constructive answer in most advanced

modern communities for the adjustment of relations between industrial managements and their employees. As Mr. Carr has rightly pointed out (*The Twenty Years' Crisis*, 1939), they are 'the nearest analogy in the national community to the turbulent relations which render the problem of change acute in the international society'.

The technical objections to an international equity tribunal can be mastered. The rules by which such a tribunal is to be guided would have to be more flexible than the rules of international law. If, within the State, the settlement of disputes of a predominantly political character is entrusted to courts, similar problems arise. Courts such as the United States Supreme Court, the Swiss Federal Court or the *Staatsgerichtshof* under the Weimar Constitution of 1919 have had to base most of their decisions on somewhat general and vague constitutional norms and still they have avoided the danger of complete arbitrariness.

As a last resort, even the Statute of the International Court of Justice enables parties to have a dispute decided *ex aequo et bono*, that is to say, in accordance with the principles of justice and equity (Article 38 (2)). Thus, it was assumed by the draftsmen of the Statute of the International Court of Justice—as by those of the Statute of the Permanent Court of International Justice—that the exercise of such equity jurisdiction was entirely compatible with the judicial character of the World Court.

Even the problem of finding the right type of judge is soluble. Equity judges could not do much more harm than the statesmen to whom the world had to leave the decisions of 1919, of the inter-war years, and of Teheran, Yalta and Potsdam. Compared with other fair-minded and intelligent persons, the special qualifications required are differences in degree rather than in kind. Above all, they must have independence, character and wide experience. They must be of the calibre of Mahatma Gandhi, Lord Lytton, Sun Yat Sen or Winant.

The real difficulty is that the powers that be desire to reserve such decisions to themselves or, if necessary, to the arbitrament of force. Advances in this field presuppose corresponding advances in the complementary sphere of collective security. Yet, proposals for an international police force pose the real problem rather than solve it.

It is easy to understand why, in the post-1945 world, the proposal for an international equity tribunal has lost much of its appeal. In the inter-war years, peaceful change did not become the complement to collective security. It degenerated into the ideology of appeasement. The post-war world has lost its appetite for appeasement.

Thus, at the San Francisco Conference, little sympathy existed for this aspect of any true collective system.

Since then, the problem has been simplified. Minor issues within the Western world could be rationally settled in this manner. It does not, however, provide an answer to the central issue: limitless Soviet imperialism. The concessions made by the West to the Soviet Union were so generous, and their interpretation by the Soviet Union so greedy, that the emphasis has completely changed. Now it is entirely on collective security. For this reason, peaceful change is not even mentioned in more recent proposals, such as those of Mr. Dulles (*Peace or War* 1950) for extending the powers of the General Assembly.

In the present world situation, greater sympathy is shown to the other feature of the New Commonwealth programme, the idea of an international police force. In July, 1948, a bi-partisan group of Senators introduced a resolution in the United States Senate. Together with other radical changes in the structure of the United Nations, they asked for an 'effective tyranny-proof international police force'. If, within the universal confederation of the United Nations, such an idea were feasible, it could be realised by the implementation of the Articles of the Charter regarding military contingents (Article 43) and the Military Staff Committee (Article 47).⁸

It may justly be argued that even then not much would be gained; for, without authorisation by the Security Council, the Military Staff Committee could not move and the United Nations force could not act. A fluke, such as Soviet absence from the Security Council in the Summer of 1950, may not occur again. Unless it does, the decisive political decision cannot be obtained. This is the fatal flaw of proposals for an international police force within a confederate framework.

It was necessary for Mr. Dulles to remind over-enthusiasts of the fact that only very exceptional circumstances enabled the United Nations to act in Korea (Broadcast of July 31, 1950). 'The Soviet Union was boycotting the Security Council and the representative of the Chinese Communist regime had not been seated. Either, if present, would have vetoed the action which produced the world's first peacetime demonstration of solidarity against unprovoked aggression.'

To ask for the elimination of the veto on decisions of so fundamental a character as enforcement measures is not to ask for a reform

⁸ See above, p. 513 *et seq*

of the United Nations, but for its transformation into a world federation. To delegate, under standing orders, decisions of this calibre to an international general staff would mean the transfer of major political decisions in disguise to the military, another form of evading the central issue. In a bi-polarised world, something different is possible and is appearing before our eyes. Each of the two camps organises its own international force against the other. By means of the escape clauses of the Charter, each decides for itself on the identity of the aggressor, subject to ultimate confirmation by the successful conclusion of their mutual efforts of international policing, and by the findings of the International War Crimes Tribunals which the victors in the Third World War may establish.

None of the proposals for the reform of the United Nations, therefore, is capable of leading out of the impasse. They either presume the present relative universality of the United Nations and are ineffective or they postulate by implication the reduction of the United Nations to the status of the international organisation of one of the two worlds. In this case, they manifest still more clearly the inability of the United Nations to safeguard world peace.

This dilemma was tersely posed by Mr. Warren Austin before the Foreign Affairs Committee of the House of Representatives (May 5, 1948): 'I have yet to find a single radical revision of the United Nations Charter which could, as a practical matter, be adopted at this time by any appreciable number of States and which, if adopted, would solve that crucial problem which is at the basis of present world insecurity. The most likely result of revision, under the present circumstances, would be the destruction of the United Nations.' Mr. Austin continued: 'Once this relative universality of membership is destroyed, such collaboration as now exists would cease and a complete break between the East and the West would occur. The only possible bridge between the East and West would collapse; and yet, the problem of bridging the gap between the East and West is precisely the crucial problem of our time.'

THE DEVELOPMENT AND CODIFICATION OF INTERNATIONAL LAW

One way of improving the United Nations, and without even asking for a revision of the Charter, remains to be discussed: the reform of international law. 'By Article 13 of the Charter, the General Assembly is charged with the duty of initiating studies and of making recommendations in order to encourage the progressive development of international law and its codification'. 'The General Assembly

delegated its functions to the International Law Commission, consisting of fifteen distinguished international lawyers (Resolution of November 21, 1947). In 1948, these were elected by the General Assembly, and, in the following year, the Commission held its first Session.

The tasks of such a Commission can be defined so widely as to include all the problems of international planning or be limited to the examination of the shortcomings of particular branches and rules of international law. The first approach would extend the functions of the International Law Commission to include consideration of the international order or quasi-order on which international law rests or ought to rest. A more modest definition of the functions of the Commission would restrict it to deliberations on the technical improvement of international law as a legal system which is adequate to meet the needs of world society.

The all-embracing view is usually at the back of the minds of those who expect from the establishment of the rule of international law the transformation of international society into a world community. They think of a system of perfect international law which would make it impossible for States by their policies to endanger the maintenance of world peace. This vista was in President Roosevelt's mind when, in 1943, he wrote to the Conference of the American Society of International Law :

'Men on the battlefields are dying that civilisation may be saved and that law by which we have learned to govern our conduct toward our neighbour, and not force, shall prevail. The body of law under which our civilisation must advance must be a steadily growing one, tempered by past experience but capable of fulfilling the needs of a rapidly changing world. The world must have such a law for its dependence. It cannot permit a recurrence of the present reign of lawlessness.'

Such a legal system would eliminate all the loopholes of power politics in disguise and provide for the establishment of all those international organs, with the necessary powers, which would be required to provide the legal skeleton of a true international community. Nothing would be simpler than the drafting of such an international code. To proceed in this way, however, would be to land once again in the *cul de sac* of the One-Way pattern. Whether proposed by international lawyers or other international planners, the problem would still be how to make such a draft acceptable to the sovereign and equal members of the United Nations.

If the International Law Commission had to tread the path of modesty, it still had to contemplate a possible choice. Was it to concern itself primarily with the clarification of dubious points of

existing international law or, more boldly, to recommend reforms of backward branches and rules of international law.

In the former case, its work would be of considerable technical interest, but, from the point of view of international planning, it would remain somewhat insignificant. Governments usually know quite well what their obligations under international law are. If they cared to be authoritatively informed on any moot point, all they would have to do is to sign the Optional Clause of the Statute of the International Court of Justice, to bring any controversial issue before the Court and to await its decision. Controversies over doubtful rules of international law may cause friction. But they will only cause a war if, for other reasons, States are anyhow resolved on war.

In the latter case, the International Law Commission may produce beautiful drafts, and the General Assembly may recommend them for adoption to the members of the United Nations. It is still, however, left to every member to decide for itself whether any such proposed change in the rules of the legal game suits its own interests.

Memory is still fresh of all the fruitless efforts made under the auspices of the League of Nations to codify selected—and rather innocuous—branches of international law. As a matter of fact, such ventures did positive harm. They made the law uncertain in fields where, before, generally accepted rules of international customary law seemingly existed, and where actual disagreement in State practice had remained latent. Such experiences would be likely to repeat themselves.

It is too much to expect from any Foreign Office that it commit itself unequivocally in a reply to questions formulated in the abstract or regarding hypothetical situations. Even if any attempt at international codification were as limited as the work of the Hague Peace Conferences, agreement is too often bought at the price of rules which give merely the appearance of certainty. Alternatively, it depends on the fulfilment of conditions which are unlikely to be realised, such as the all-participation clause.

In the Statute of the International Law Commission, adopted by the General Assembly on November 21, 1947, a distinction is drawn between codification and progressive development of international law. 'Codification is defined as the 'more precise formulation and systematisation of rules of international law in fields where there already has been extensive State practice, precedent and doctrine'. Progressive development of international law means the 'preparation of draft conventions on subjects which have not yet been regulated

by international law or in regard to which the law has not yet been sufficiently developed in the practice of States' (Article 15).

In the field of codification the Commission has a free hand. It is charged with the task of surveying the 'whole field of international law with a view to selecting topics for codification' (Article 18). In the sphere of the progressive development of international law its power of initiative is more limited. It is to study proposals referred to it by the General Assembly and the other principal organs of the United Nations, by specialised agencies, official inter-governmental bodies and by individual members of the United Nations (Articles 16 and 17).

From a preliminary list of topics suitable for codification, the Commission gave priority to the law of treaties, arbitral procedure and the regime of the high seas. It referred to a later stage the study of the laws of war. The Commission recognised the urgency of the task; for its work on offences against peace necessitated a clear definition of the rules governing the legitimate and illegitimate use of armed force. The majority felt, however, that 'if the Commission, at the very beginning of its work, were to undertake this study, public opinion might interpret its action as showing lack of confidence in the efficiency of the means at the disposal of the United Nations for maintaining peace' (*Report of the International Law Commission Covering its First Session 12 April—9 June 1949, A/925*).

This passage allows only two interpretations. Either, all the evidence to the contrary notwithstanding, the Commission itself has such confidence or it lacks it, but does not deem it desirable for the public to realise a state of mind so unbecoming to a United Nations agency. Whichever interpretation is preferred, the result is slightly disturbing. It means either that a body of 'persons of recognised competence in international law' (Article 2 of the Statute of the Commission) is unaware of the facts of international life or that it is susceptible to considerations of an extraneous character.

In the field of the progressive development of international law, the Commission had to give priority to the request of the Second Session of the General Assembly (November 21, 1947) to prepare a draft code of offences against the peace and security of mankind, with special reference to the principles of international law recognised in the Charter and Judgment of the International Military Tribunal of Nuremberg. In accordance with another resolution of the General Assembly (December 9, 1948), the Commission undertook the related task of considering the problem of international criminal jurisdiction.

The International Law Commission was finally saddled with the task of doing something about the draft Declaration of Rights and

Duties of States. This had been inflicted by Panama on the General Assembly, which promptly referred it to the International Law Commission—then not yet established. In the opinion of the Commission, this work 'fell within neither of the two principal duties laid upon it by its Statute'. Nevertheless, with commendable tact, the Commission accepted its burden as a 'special assignment from the General Assembly' (First Report of the International Law Commission, 1949).

The interest shown by the members of the United Nations in the codification of the rights and duties of States is illustrated by the Resolution of the General Assembly of November 21, 1947. The Assembly noted with concern that 'very few comments and observations on the draft declaration on the rights and duties of States presented by Panama have been received from the States members of the United Nations'. In the end, seventeen governments complied, most of them only in form, but some—those of Greece, India, Mexico, the United Kingdom, the United States and Venezuela—took the trouble of coming to grips with the real difficulties of any such codification.

In the reply of the United Kingdom Delegation to the United Nations of August 24, 1948 (United Nations. *Preparatory Study concerning a Draft Declaration on the Rights and Duties of States*, 1948), these difficulties were pointed out :

'The expression of the most general and elementary principles of international law in a statement in legislative form is a task of great difficulty. In fact, there are two horns of a dilemma which have to be avoided. On the one hand, though a general principle may be generally accepted and perfectly understood, its expression in legislative form means that every word has to be considered with the utmost care from the drafting point of view to ensure that, when viewed as a legislative enactment, it is not possible to put upon it, by a literal construction, wrong meanings. On the other hand, the exercise of care to avoid the first horn of the dilemma must not produce the result that the propositions stated are mere platitudes or else propositions which are completely circular.'

The Draft Declaration which was prepared by the International Law Commission is a strange hybrid. It leaves uncertain which of its Articles are meant to be duties and rights under universal international law; which are inserted merely as abstracts from obligations of members of the United Nations under the Charter, and which constitute a departure from existing universal international law or go even beyond the treaty law of the Charter. Thus, to hold that 'every State has the right to independence' (Article 1) is certainly not true of the member States of a federation. The meaning of State

is nowhere defined in the Declaration. If the term were limited to subjects of international law, dependent States, such as international protectorates, could not claim this 'right' under existing international law. Similarly, the alleged duty of non-member States to refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action (Article 10) might well be challenged by any non-member of the United Nations.

On a different ground, Professor Hudson, the Chairman and United States member of the International Law Commission, voted against the draft. In his opinion, the Article (6) on human rights went both beyond international law and the obligations of members under the Charter. Professor Koretsky, the Soviet member of the Commission, combined a number of mutually exclusive arguments to justify his vote against the draft. In his opinion, the deficiencies of the draft were that, in some respects, it was not sufficiently conservative in the exposition of the rights and duties of States under existing international law nor sufficiently advanced in fields in which the Soviet Union would favour developments in international law.

The International Law Commission advised the General Assembly to adopt and proclaim its Draft Declaration to the world. The General Assembly did not, however, act on this suggestion (Resolution of December 6, 1949). It noted that 'at the present time, it has encountered some difficulties in formulating basic rights and duties of States in the light of new developments of international law and in harmony with the Charter of the United Nations'; considered that the subject was in 'need of continuing study'; graciously described the draft as a 'notable and substantial contribution' to the subject; recommended it to the 'continuing attention of member States and of jurists of all nations' and, with a final flourish, transmitted it with all the documentation to the member States for further comments and suggestions.

This first experiment should not be judged too harshly. Like any other institution, the International Law Commission is only just finding its feet. It will take time to develop a corporate spirit. Compared with the comparable activities of private bodies, such as the *Institut de Droit International*, the International Law Association or the International Bar Association, the International Law Commission is in a more favourable position.

It is served by a well-staffed secretariat, the United Nations Division on the Development and Codification of International Law. The remuneration offered to the members of the Commission should enable them to give full attention to their work. Yet, on this point, discontent flared into openly voiced indignation when the members

of the Commission learned that the members of the United Nations Administrative Tribunal received remuneration at one and a half times the rate of the members of the International Law Commission. They resolved that they did not wish, in future, to be treated any longer as experts, but desired the recognition of their status as legal advisers (meeting of July 19, 1950).

Actually, the whole status of the members of the Commission is ambiguous. In contrast to the Statute of the International Court of Justice, the Commission's Statute does not lay down any criteria of incompatibility of functions. No member of the World Court may exercise any political or administrative function nor engage in any other occupation of a professional nature. The difficulty in making provisions to this effect is that the activities of the Commission are visualised as part-time work. In fact, they tend to become a full-time occupation, especially for the *rapporteurs*. Moreover, it is not clear whether the members act as independent experts or as de facto representatives of their States. These ambiguities are not accidental. They are the result of a compromise between diverging views.

The United States favoured a body elected jointly by the General Assembly and the Security Council in analogy to the electoral procedure for members of the World Court. The United Kingdom wanted to make the members of the Commission as independent as possible but, at the same time, was anxious to limit the Commission strictly to the task of restating existing international law. The Soviet Union favoured a Commission of government representatives. The Statute did not, however, settle the problem of the position of individual members in relation to their own governments. This is left to the conscience of each member of the Commission.

Compared with the place of other law-determining agencies, and of the elements of such agencies, it is too early to assess the standing of the International Law Commission in more than a highly tentative way. It shares with the International Court of Justice the assets of representing the main forms of civilisation and the principal legal systems of the world and of high technical qualifications of its members. Yet even when the Commission limits itself to the statement of existing international law, such declaratory work has not the same value as evidence of international law as the law laid down in decided cases. There is a difference in weight between mere proclamation and actual application of the law.

If the Commission should follow the practice adopted during its first session and fail to distinguish articulately between declaration of existing law and recommendations for the development of international law, this would necessarily impair still further the chances

of the Commission's work being treated as evidence of existing international law. The Commission would be in danger of being bracketed with those representatives of doctrine who are unwilling or incapable of drawing in their writings the vital distinction between *lex lata* and *lex ferenda*.

The real difficulty lies, however, in the unclarified status of the members of the Commission. They are not representatives of their States. Thus, their contributions to the deliberations of the Commission cannot even be safely treated as evidence of individual State practice. Nor is their independence from governmental guidance institutionally safeguarded. However little, in some cases, this might mean even in the case of members of international Courts and tribunals, it is open to doubt whether, in their official capacity, all the members of the International Law Commission act with the independence that may be expected from representatives of the doctrine of international law.

This is merely a technical problem of international law. From the point of view of international planning, the decisive point is that any gremium of international lawyers can, necessarily, only fulfil somewhat limited functions. If they restrict their task to merely declaratory work, they cannot hope materially to affect the shape of things to come. If they keep within the compass of the United Nations Reform pattern, their proposals for the progressive development of international law will be conditioned by the fate of the overriding international quasi-order of the United Nations. If (which is unlikely) they were to venture out into uncharted fields of international planning, they would probably stray far beyond the optimum frontiers of international planning on a world scale. At its best, the work of the International Law Commission will be a minor technical contribution in its own limited field to the solution of major problems which will be decided on another plane.

The general trend in the post-1945 period is not favourable to any 'progressive development of international law'. Neither the General Assembly nor the Security Council has been notable for its scrupulous regard for the law of the Charter. Even compared with the inter-war period, international arbitration has become a rarity. Over a period of five years, the International Court of Justice has delivered judgment in only two contentious cases and one of these judgments has not been carried out.

In his Report to the Second Session of the General Assembly (A/459), Dr. Kaeckenbeeck as *Rapporteur* of the Sixth Committee, gave expression to a 'very general feeling of regret and concern at

the indifference too often shown for the legal aspects of matters and at the disregard shown in recent years for arbitral and judicial methods'. At least on a universal scale, the post-1945 world is not a congenial climate for the progressive development and codification of international law. As in the field of international institutions, such further integration as is feasible is likely to take place within each of the two worlds.

THE NUCLEAR PATTERN: I. REGIONAL AND FUNCTIONAL INTEGRATION

Mr. Churchill's answer to the question whether the British offer for Anglo-French Union of June, 1940, still represented the policy of His Majesty's Government: 'No Sir' (House of Commons, April 25, 1945).

THE nuclear pattern in any of its variations—regional, functional or federal—takes for granted the impracticability of establishing a world community in the foreseeable future. In its resignation to the inevitable, it lays claim to greater realism than any universal pattern. At the same time, though, it offers no alternative to world power politics. It is limited to those parts of the world in which a higher degree of international integration may be attained than, at present, exists on a universal scale. If its advocates pretend to more, as they are often tempted to do, their schemes degenerate into mere ideologies of power politics.

It is impossible to state in the abstract whether, if realised, such plans would tend to increase or diminish international tension. Regions may be politically, militarily and economically integrated for any ends. Industries and services may be pooled for good or for evil. Forms of organisation are ethically neutral. Any valuation must depend on the purposes for which this, like any other, pattern is employed.

Those who advocate a federation of Western Europe may be convinced that it would form a bastion of peace. Without it, they may argue, Europe west of the Elbe lies at the mercy of any invader from the East. Soviet-inspired counter-propaganda, however, sees in any moves towards closer European unity merely a new disguise of Western preparations for war. In reality, any assertion one way or the other is as unverifiable as similar protestations regarding the white or black motives of national foreign policies.¹

It is less difficult to assess the functions which are fulfilled by such artificial creations. They tend to produce new middle or perhaps even world powers. Thus, they are in line with the trend towards the concentration of power. They do not, however, affect the bipolar character of contemporary world politics. Neither inter-American,

¹ See above, pp. 150, 530 and 706 *et seq.*

European, Near-Eastern or Pacific regional arrangements nor the British Commonwealth, which cuts across such neat groupings, affect the focal position of the United States in the Western world.

In their calculations, the sponsors of any of these groupings draw heavily on the reserve power of the United States. Such integration of Europe as there is, or is likely to be, is more American- than European-inspired. The weakling of the Arab League rests on British and American goodwill, and any Pacific agreement that were not underwritten by the United States would hardly be worth the paper on which it was written. Finally, the British Commonwealth could no longer exist against the will of the United States.² The fact that the United States considers it as a stabilising factor in world politics and, for this reason alone, its maintenance as a direct interest of United States policy has become the strongest safeguard of the British Commonwealth against centrifugal tendencies within it.

The position in the Soviet-controlled sector of the world is still simpler. Regionalism among the satellites is high treason against the cause of world revolution and is prohibited. Each satellite may, however, integrate itself to its heart's content into the all-embracing hug of the Soviet bear.

To distinguish between regional, functional and federal variants of the nuclear pattern is open to systematic objections. Regional integration is possible on a confederate, federal or functional basis. Geographical and functional regions may overlap. Federalism need not necessarily be vertical, that is to say, political. It may also be horizontal or functional. Regional confederation and functional federalism may grow side by side and be preparatory steps for a political federation. If, nevertheless, these distinctions are adopted, this is done merely on grounds of convenience to establish some kind of order in an unwieldy mass of material.

Even in specialised agencies of the United Nations, in which members of the Eastern *bloc* either do not participate or constitute only an insignificant minority, functional federation is more an aspiration than a reality; for, even in the relations between Western powers, the primacy of politics is taken for granted. Corresponding with the growing trend towards the increase in State activities in the economic, social, cultural and educational fields, spheres which are politically irrelevant sharply contract. Such topics are still amenable to international treatment only if they fit into the overriding political context, yet only because such functional international co-operation happens to be politically desirable.

Thus, the Schuman and Pleven Plans or international analogies

to the Tennessee Valley scheme only become practical possibilities if, when, and to the extent to which the nations of Europe are ready to draw closer together in the political and military fields. To visualise such a development in the reverse order appears to be un mindful of the realities of international life. These still postulate the primacy of politics.

For this reason, such tendencies towards functional internationalism as exist in the present-day Western world will be discussed in their proper political settings. With the exception of the British Commonwealth all significant groupings in the non-Soviet world are on a regional basis. It is advisable, therefore, first to deal with the British Commonwealth as a factor in international planning and then to concentrate on the various regional groupings.

THE BRITISH COMMONWEALTH

From the point of view of international planning, the British Commonwealth of Nations has two remarkable features. It extends to all the world's continents and it is the only existing attempt—however imperfect—at living the ideal of an international community on an inter-racial basis.³ When, at the First Session of the General Assembly, the non-permanent members of the Security Council were elected, Canada showed the Commonwealth spirit at its best. Both Canada and Australia were candidates. After having come within one vote of being elected, Canada withdrew her candidature on the ground that it would be embarrassing to the other delegates to 'go on balloting between two of the Dominions of the Commonwealth'.

With the active support of the United States, and in junior partnership with her, the British Commonwealth maintains the rule of the sea in all the waters which link the non-Soviet world together. It has established a far-flung air network with the necessary land bases which supplements the more traditional means of communications between its members. If the United States is the nucleus and focus of the non-Soviet world, the British Commonwealth is the most vital of the brackets that hold it together. With one reservation, it appears to have reached its maximum scope. It has a still unexplored power of attraction in the countries on the North Atlantic fringe from The Netherlands to Norway.⁴ As one of the more static elements in the structure of the post-1945 world, it does not at this stage require any further examination.⁵ The existence of this tried and durable

³ See above, p. 71 *et seq.*

⁴ See below, p. 804.

⁵ See above, p. 71 *et seq.*

experiment must, however, be taken for granted in any realistic plans for the further integration of the non-Soviet world.

THE NORTH ATLANTIC SYSTEM

From a practical point of view, the next important grouping is the North Atlantic defence system.⁶ In view of the fact that France and the United Kingdom are both Atlantic and Mediterranean powers, and that the flanks of this defensive system might be turned from the Adriatic and Aegean, the narrow conception of the Atlantic space had to be considerably broadened. Italy is already a party to the North Atlantic Treaty. Although Greece and Turkey have not yet been formally admitted to membership of the North Atlantic Treaty Organisation, their defence is closely co-ordinated with that of the Mediterranean Planning Group of the Organisation.

The North Atlantic system has four chief drawbacks. By itself, it is not sufficient to answer the challenge of Soviet aggression. In a bipolarised world, such a defence system must either extend from the North Atlantic to the Far East via the Mediterranean, the Near and Middle East, or it must be one of several inter-linking regional defence agreements. In the latter case, the Near and Middle East are both Achilles' heels in North Atlantic strategy. From a functional point of view, the weakness of the North Atlantic system is its exclusiveness on ideological grounds. Spain is undemocratic but, in terms of Continental strategy, hardly less important than the United Kingdom or Western Germany. Moreover, for some time to come, the North Atlantic system is not likely to achieve its chief purpose, that is to say, to give security to the European nations north of the Pyrenees.

Finally, the proper military organisation of any such area requires greater equality in financial sacrifice for the execution of the rearmament programmes, more specialisation in the production of armaments and more balanced collective forces than appear to be attainable under a defensive alliance between independent nations. Thus, it is common knowledge that, as a group, the Atlantic Treaty powers are overarmed at sea. Yet none of them can ignore the contingency that, in case of aggression against itself, a considerable margin of discretion is left to the other contracting parties regarding the fulfilment of their obligations.⁷ Moreover, the smaller States among them take as much pride in their navies as do the United Kingdom and the United States.

Though the form in which such co-ordination has been achieved

⁶ See above, p. 521, *et seq.*

⁷ See above, p. 533.

between the Soviet Union and her Eastern European satellites may not appeal to Western minds, these totalitarian States have, in the military field, stolen a march on their potential enemies. The deficiencies of the North Atlantic system as an effective defence organisation furnish a strong argument for the federal pattern in non-Soviet Europe. The integrated European defence force, approved by the North Atlantic Council at its meeting of September, 1950, has to be seen to be believed.

THE NEAR EAST

The only visible attempt at regional organisation in the Eastern Mediterranean is the Arab League. After the dangerous fluctuations of Levantine-Arab nationalism with Nazism, and Egypt's more than dubious attitude at the time of British reverses in North Africa in 1941 and 1942—facts to be remembered in the present East-West tension—the United Kingdom sponsored a new alignment in the Near East. The British Foreign and Colonial Offices had long favoured a closer association between the States in the Near East. The British-trained Arab Legion had been consistently imbued with a pan-Arab ideology.

In September, 1944, a preliminary conference of Levantine-Arab foreign ministers took place in Alexandria. Under the 'Dumbarton Palms' the scheme for an Arab League was discussed in outline. After further diplomatic preparation, the Pact of the League of Arab States was concluded between Egypt, Iraq, Jordan (then Transjordan), Lebanon, Saudi Arabia, Syria and Yemen (March 22, 1945).

The purposes of the League are defined as the achievement of closer co-operation between its members and co-ordination of their foreign policies. The chief organ of the League is its Council, composed of representatives of each member. In order to be binding on all members, political decisions of the Council must be unanimous. Majority decisions bind only those members who accept them (Articles 7 and 16). Cairo is the permanent seat of the League. In short, the Arab League is a loose type of confederation.

In form, the Pact meets the requirements of a regional agreement. All its members are Near Eastern States. The representatives of the Levantine-Arab States at the San Francisco Conference praised their newly founded League as the model of a regional agreement. If this were the case, then enforcement measures under this regional arrangement could only be taken with prior authorisation of the Security Council (Article 53 of the Charter). At the same time, however, any such regional agreement always fulfils automatically the conditions of an agreement for collective self-defence under Article 51 of the

Charter. To achieve this object was the original *raison d'être* of this Article.⁸ Thus, in case of armed attack against any of its members, the Arab Union would, by this backdoor, regain its freedom of action—subject to being called to order by the Security Council.

In spite of additional economic, social and cultural objectives, the chief purpose of the Arab League was mutual insurance. Such negative unity as it ever had it derived from the joint interest of its members in obtaining the French withdrawal from Syria and the Lebanon and in forestalling the rise of a Jewish State in Palestine. A hidden purpose of the Pact was dictated by the mutual jealousies of the members of the League. This was to prevent any one of them from absorbing Palestine and from establishing a hegemonial position in this area. The powers which were, and are, suspected by the other members of harbouring such aspirations are Egypt, Iraq and Jordan.

When, with Britain's abandonment of her mandate in Palestine, one of these contemplated contingencies arose, the forces of three of the members of the Arab League, supported by symbolic contingents from the others, marched. Yet, with the exception of the Arab Legion, they soon marched in the wrong direction. In a short but sharp campaign, the Israeli army—by Western standards then not yet much more than a moderately armed home guard—exploded the carefully built-up myth of Arab-Levantine military valour in conditions of modern warfare.

Thereafter, the members of the Arab League engaged in fruitless mutual recrimination. The Security Pact of 1950, sponsored by Egypt and Saudi Arabia and designed to put teeth into the Arab League, was not signed by Iraq and Jordan. The rivalry between the Hashimite kingdoms of Iraq and Jordan, on the one side, and Egypt and Saudi Arabia, on the other, neutralises the Arab-Levantine States in the Eastern Mediterranean, though not in the United Nations. There the Levantine-Arab representatives rival those of the Latin-American States in driving shrewd and hard bargains for the use of their votes in the General Assembly.

The area, which forms the meeting place of Asia and Africa, which controls the land, sea and air routes from the Mediterranean to the Indian Ocean, and which abounds in oil, is too valuable to be allowed to become a political no man's land. After the failure of Mr. Bevin's pro-Arab policy, the United States insisted on a more realistic policy towards this area. Her hand was strengthened by Turkish and Persian desires to see something closer at hand and more tangible than the somewhat remote apparatus of the North Atlantic Organisation. Before a Security Pact in the Eastern Mediterranean becomes

a practical proposition, however, the Levantine-Arab States will have to recognise and accept the fact that Israel has come to stay.

As a first step towards this end, France, the United Kingdom and the United States have co-ordinated their armaments policies regarding the Near Eastern States. In a joint declaration of May 25, 1950, the three powers announced their resolve to oppose any armament race in the Near East and to assure that all of these States would 'play their part in the defence of the area as a whole'. They made it equally clear that they would not tolerate the 'use of force or threat of force between any of the States in that area'. If any of these States should venture to violate frontiers or armistice lines, the three powers 'would, consistently with their obligations as members of the United Nations, immediately take action, both within and outside the United Nations to prevent such violation'.

With unity among the three chief Western powers on their policies in the Near East, and with United States funds for the economic development of the area, the political conditions for closer functional integration of the Near East exist. Only in this way can a situation be created in which the Near East is more than a vital strategic area and oil reservoir. What this whole region—with the exception of Israel—needs most is a rise in the standards of living of the masses of its population, concomitant with corresponding increases in productivity and in the general educational level. Given the necessary time, such reforms, tactfully, but firmly, pressed from outside on incompetent and unwilling ruling cliques, may be an alternative to the present stagnation and to the danger of infection of the Near East by Communism. International functionalism may well be the politest way in which the overdue reorganisation of this region can be undertaken.

SOUTH ASIA

Regional groupings in the Indian Ocean and in the Pacific are in a still more embryonic state. India and Pakistan are absorbed in watching each other with distrust. More than Pakistan, India would like to maintain an attitude of neutrality in the East-West rift. Over Korea and Tibet her leaders found, however, that, faced with open aggression, it was impossible to go on sitting on the fence. With the rise of Communist China, Indian hopes for a Pan-Asian bloc under Indian leadership are fading away. Whatever chances this scheme may have depend on the rise of 'Titoism' in China. Yet, so far, there is little evidence of this. Since the First Pan-Asian Conference took place in New Delhi in 1947, more urgent tasks nearer

home than the unity of Asia have occupied Asiatic statesmen outside the Soviet orbit.

So long as the Soviet Union refrains from any open thrust into the land mass between the Persian Gulf and the Bay of Bengal, the navies of the members of the British Commonwealth, who are primarily concerned with this area, are well able to undertake the task of policing the Indian Ocean. Ceylon in the centre; Mauritius, Aden and Singapore, and the flanking continents of Africa and Australia ensure the security of the Indian Ocean region by sea.

The real threat to this area comes from the open land flanks. In the north-west, Persia is the chief danger point. The Soviet Union is building up formidable industrial centres in Central Asia and has established strong military and air bases there. Afghanistan is expanding its trade with Soviet Russia, and the Soviet Union is ably represented at Kabul. As in the days of Czarist strategy, Soviet military preparations in this area may be merely a blind.⁹ It is, however, possible to speculate on a different reading of the potentialities of Soviet strategy in the Middle East.

In discussing the division of the world with M. Molotov, Hitler encouraged him to think of Soviet expansion towards the Indian Ocean. At that time, the Soviet leaders felt that first things—Eastern Europe and the Balkans—should come first.¹⁰ Later, they absorbed as much of this area as they could without risking open war with the Western powers. There is no reason to assume that, in principle, the men in the Kremlin object to Hitler's geopolitics. Moreover, Stalin prides himself on being an Asiatic. Compared with the somewhat self-centred and inflated world picture of still primarily Europe-minded students of world affairs, the 'Asiatic' approach to problems of global strategy has its advantages.

Any such thoughts may be dismissed as empty speculations of armchair strategy. One solid fact, however, remains. In the whole area between Turkey and Burma there are no land or air forces which are comparable in strength with those of the Soviet Union. If the Soviet leaders decided on such a thrust as part of a general attack, their initial military prospects would be disturbingly promising. Assuming that, on grounds of long-term policy and because of poor land communications in this glacis, the Soviet leaders should resist such temptations, the Eastern flank of the Indian Ocean represents the other main danger-spot. The armed encounters, or rebellions, in Burma, French Indo-China, Malaya and Indonesia produce an amount of chaos which differs only in degree from open war.

⁹ See above, p. 47 *et seq.*

¹⁰ See above, p. 309 *et seq.*

While the Communist threat in South-East Asia persists, security in the area of the Indian Ocean will be precarious and will depend on the fate of the decisive Pacific area. As in Europe, the key problem here is to find the proper balance between armed strength and the immense constructive tasks ahead. Like the Near East, the whole of South and South-East Asia suffers from economic under-development, low standards of living of the masses, and the unhealthy concentration of wealth in the hands of the few, the usual features of such retrograde economic and social systems.

Theoretically, here, if anywhere, is the ideal field for international functionalism. Industrialisation, soil conservation, improvements in agricultural techniques, irrigation, afforestation, education and birth control are the most urgent tasks. It has yet to be shown that, short of social revolution, the privileged classes in these countries will be prepared to exchange obstructive passivity for self-denying leadership. Even if their intelligentsia should be willing to tackle these tasks, it would be hampered by outdated remnants of anti-Western nationalism and by fearful calculations on a possible victory of Communism in Asia. The first task is, therefore, necessarily to remove these doubts by creating positions of strength. Then, a sufficiently solid basis for functional experiments may exist.

THE PACIFIC AREA

Until it is clearer than it is at present what the real intentions of China's rulers are, the overriding problem is the security of the Pacific area. Here, and in the land space between the Near East and India, the future of the area of the Indian Ocean is likely to be decided. For all practical purposes, the chief responsibility for policing the Pacific Ocean area against Communist expansion has fallen on the United States. Remembering their experiences of 1941 and 1942, Australia and New Zealand are well content to take shelter under this security umbrella. In the words of a speech made by Mr. Nash in Washington (February 15, 1943), 'we (Australia and New Zealand) owe a very great deal to the United States Navy, Army and Marines—more than we can easily express'. British and French bases in this area usefully supplement the United States establishments.

With the conclusion of the Anzac Treaty between Australia and New Zealand (January 21, 1944), a beginning with the regional organisation of the Pacific area has been made. The agreement is comprehensive in scope. It covers security and defence, civil aviation, colonial dependencies and migration. Under it, permanent

machinery for co-operation between Australia and New Zealand has been established. At the same time, the Anzac Treaty was a protest against the greater power diplomacy of the Big Three—in this case, President Roosevelt, Mr. Churchill and General Chiang Kai-shek. Australia and New Zealand resented the unilateral character of the decisions which had been reached at Cairo on the future of the Pacific. If there were still room for doubt, the section in the agreement on 'Armistice and Subsequent Arrangements' makes this objective of the Pact unmistakably plain. The strictly bilateral character of the agreement prevents it from becoming the formal starting point for any wider regional arrangement on the Pacific. Yet, any projected Pacific Pact would have to start from similar bases.

Since the Anzac Treaty, the only other significant step taken towards greater regional integration of the Pacific area is the establishment in 1947 of the South Pacific Commission by Australia, France, The Netherlands, New Zealand, and the United States. It follows the usual lines of consultative international institutions. A promising peculiarity is the Commission's Research Council, consisting of three full-time and twelve part-time members. By research is merely understood what in American terminology is called action research, that is to say, discovery of the facts on which the Commission may desire to make its recommendations. In scope, the Commission is limited to the economic and social development of the non-self-governing territories in the South Pacific. In view of the fact that American thinking on the Pacific is primarily strategic and based on the reality of United States naval and air supremacy in this area, the maximum that can be expected in this area is increasing military co-ordination under American leadership and, possibly, some further growth of functional international co-operation among the non-Communist nations of the Pacific.

THE WESTERN HEMISPHERE

The next regional grouping which has to be considered is the inter-American system. The hesitant way in which it developed has often been described as a typically American approach to international organisation. In a sense, this is true. In the nineteenth century, the Monroe Doctrine, implemented by United States resolve and the British guard of the Atlantic, effectively excluded the Western hemisphere from the antagonistic alignments of the European powers.¹¹

The Spanish challenge to the Monroe Doctrine in the attempt to reconquer San Domingo during the American Civil War failed with-

out requiring American intervention, which, at the time, would have been difficult. When, after the conclusion of the Civil War, the United States could give proper attention to French intervention in Mexico on behalf of the Austrian Archduke Maximilian, France thought it wise to withdraw from this ill-conceived venture. The Monroe Doctrine was not, however, meant to define United States policy regarding the other American States, and the expansionist policy of the United States in the second half of the nineteenth century filled the Latin-American States with understandable apprehension of United States designs.

The Pan-American Union, founded in 1890 as the Commercial Bureau of the American Republics, then rechristened International Union of the American Republics, and, since the Pan-American Conference of Buenos Aires of 1910, styled Pan-American Union, rather confirmed than dispelled such fears. The Union owed its existence to Secretary Blaine's efforts to expand United States trade. His real aim was an inter-American customs union which would have made Latin America safe against the industrial competition of Europe. In the face of Latin American opposition, this project failed. The Pan-American Union was reduced to a periodic conference. Its headquarters were established in Washington. Until 1923, the United States Secretary of State was *ex officio* chairman of the conferences of the Union. Without exception, its Director-General was a United States citizen. The members of the Pan-American Union had to be represented by their diplomatic envoys in Washington. This meant that if a government failed to obtain recognition by the United States, it was automatically deprived of its seat in the Union.

In the era of dollar diplomacy, when the United States established a number of *de facto* protectorates in Central America and in the Caribbean, the United States desired to keep a free hand. She, therefore, did not favour any extension of the activities of the Union into the political field. In their turn, the Latin American States were driven into a position of increasing touchiness regarding any interference with their often somewhat formal independence. Intervention in any form became an anathema to them, and they shuddered when they thought of President Theodore Roosevelt's conception of 'international police power'.

President Wilson was fully aware of these obstacles to Pan-Americanism. From 1914 onwards, he, House and Lansing, worked towards a Pan-American Treaty which, on a basis of mutuality, would guarantee the territorial integrity and political independence of the American States under republican forms of government. In

his address to the Pan-American Congress (January 6, 1916), President Wilson came into the open with this proposal. Yet relations between the United States and Mexico were deteriorating to a point to make the scheme still-born.

After the United States had entered the First World War, President Wilson still occasionally flirted with the idea, but his administration became absorbed in more urgent major issues. From June, 1918 onwards, President Wilson concentrated on his plans for a universal League. However much his insertion into Article 21 of the Covenant of the reference to 'regional understandings like the Monroe Doctrine' was influenced by the necessity of appeasing the United States Senate, it posed the main problem that had still to be solved. If Pan-Americanism was to become a reality, the Monroe Doctrine had to be pan-americanised.

During the Republican Administration which followed the Wilson era, the practice of dollar diplomacy in Central America and in the Caribbean spoke louder than the ratification by the United States of the Gónzalez Treaty on conciliation of 1923 or her signature of a number of innocuous conventions at the Havana Conference of 1928. The real break with the imperialist past came with Franklin Roosevelt's inauguration as President of the United States. He succeeded where previous administrations had failed; he gradually convinced the Latin American States that when he spoke of good-neighbour policy he meant it.

In his address at Chautauqua, New York (August 14, 1936), the President summarised how, by example, he had tried to live up to the sensible maxim that 'peace, like charity, begins at home':

'We have negotiated a Pan-American Convention embodying the principle of non-intervention. We have abandoned the Platt amendment which gave us the right to intervene in the internal affairs of the Republic of Cuba. We have withdrawn American marines from Haiti. We have signed a new Treaty which places our relations with Panama on a mutually satisfactory basis. We have undertaken a series of trade agreements with other American countries to our mutual commercial benefit.'

Without expressly raising the question of the Monroe Doctrine, President Roosevelt attained the object of generalising this concept by the proclamation of the twin principles of non-recourse to force and non-intervention in the internal affairs of American States. Moreover, the members of the Pan-American Union agreed to become jointly responsible for upholding the Monroe Doctrine by consultation whenever the peace of the Americas should be threatened. Since the Conferences of Montevideo (1933) and Buenos Aires (1936), this

particular ghost of Latin-American statesmen had been effectively laid. The Declaration of the Principles of the Solidarity of America (Lima, 1938) consummated this development.

The American States proclaimed that they had 'achieved spiritual unity through the similarity of their republican institutions, their unshakeable will for peace, their profound sentiment of humanity and tolerance, and through their absolute adherence to the principles of international law, of the equal sovereignty of States and of individual liberty without religious or racial prejudices'. They reaffirmed their intention to collaborate in the maintenance of the principles upon which their continental solidarity was based and, 'faithful to the above-mentioned principles and to their absolute sovereignty', their decision to maintain them and to defend them against all foreign intervention or activity that might threaten them.

The sovereignty complex of the Latin-American States made it advisable to reiterate that the Governments of the American Republics would 'act independently in their individual capacity, recognising fully their juridical equality as sovereign States'. At the initiative of any of the Ministers for Foreign Affairs of the American Republics, these were to meet for consultation on matters affecting the peace of the Western Hemisphere. Roosevelt's good-neighbour policy had succeeded in establishing a regional consultative system.

It only required the shock of apparently successful aggression in Europe to drive the American nations further along the path of confederation. Three weeks after the outbreak of the Second World War, the American Foreign Ministers met at Panama and decided on the establishment of a safety zone of three hundred miles around their Continent. They declared it to be their inherent right that no hostile acts should be committed in this zone by any of the belligerents. Although such a declaration could not affect the rights of belligerents under international customary law, it did create some sort of common attitude towards the war in Europe. Although utterly unsuited to the purpose of keeping the war away from the Western Hemisphere, the Declaration was at least a collective gesture.

With Pearl Harbour, the psychological atmosphere changed. The United States had to make the fullest use of the economic potentialities of the Americas and to eliminate numerous nests of German-Italian military and economic espionage and their well-financed centres of propaganda. The consultative meetings of Havana (1940), Rio de Janeiro (1942), Chapultepec (1945) and Rio de Janeiro (1947) were the stepping stones to the establishment of the Organisation of American States at the Conference of Bogotá (1948).

The Charter of the Organisation of American States (OAS) of

April 29, 1948, is the constituent document of this regional confederation. Membership is open to all American States. By States, sovereign States are meant. Thus, Canada—but not colonies of European States—qualifies for membership. The Organisation does not provide for the admission of members by way of election. Every sovereign American State has a right to be admitted and, on ratification of the Charter, automatically acquires membership. After two years' notice and fulfilment of all its obligations under the Charter, every member is free to withdraw from the Organisation. The Charter does not provide for the suspension or expulsion of members.

The objects of OAS are to achieve an order of peace and justice, to promote solidarity between its members, to strengthen collaboration between them, and to defend their sovereignty, territorial integrity and independence (Article 1). More specifically, the purposes of the Organisation are to strengthen the peace and security of the Continent; to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the member States; to provide for common action on the part of those States in the event of aggression; to seek the solution of political, juridical and economic problems that may arise among them, and to promote by co-operative action their economic, social and cultural development (Article 4). Two chapters of the Charter on Principles and on Fundamental Rights and Duties of States consolidate previous inter-American declarations and conventions.

In the field of the pacific settlement of disputes, the Charter limits itself to the enunciation of general principles. They are elaborated in a special convention, the American Treaty of Pacific Settlement of April 30, 1948. Its object is to provide for the pacific settlement of any kind of disputes between the American States with the exception of matters within the domestic jurisdiction of States, matters settled by arrangement between the parties, by arbitral award, judicial decision, or governed by treaties. In inter-American disputes, the signatories have accepted the jurisdiction of the International Court of Justice regarding justiciable disputes covered by the Optional Clause of the Statute of the World Court.

In the case of non-justiciable disputes, the Convention provides for the usual devices of good offices, mediation, investigation and conciliation. In addition, it puts an optional arbitral procedure at the disposal of parties. The United States Senate has still to make up its mind on the reservations which it may deem necessary; and the other American States theirs on the question whether they are prepared to accept any such limitations.

The system of collective security under the Charter of OAS refers

back to the Treaty of Rio de Janeiro of 1947. It keeps to the customary confines of a defensive alliance, but in collective trappings, and it has served as the model for the North Atlantic Treaty.¹²

The members of OAS are also bound to co-operate with each other for the promotion of common economic, social and cultural objectives.

OAS has a multitude of organs. The supreme organ is the Inter-American Conference, which meets every five years and is charged with responsibility for the 'general action and policy of the Organisation' (Article 33). With the approval of two-thirds of the members, special inter-American Conferences may be held. Each member is entitled to one vote, but the Charter does not lay down any general voting procedure.

As, in some specified instances, provision is made for a two-thirds majority, and as, on other than organisational matters, the Conference has no executive powers, its resolutions probably require only a simple majority. Although this interpretation is contrary to strict international law on this subject,¹³ it is in line with the provisions regarding corresponding organs of the United Nations and of its specialised agencies.¹⁴

In matters of urgency and common interest, the Meeting of Consultation of Ministers of Foreign Affairs can be convened at the request of any member and with the authorisation of the Council of OAS. The Council, consisting of one representative of each member, is the chief organ of the inter-American system. The Inter-American Economic and Social Council, the Inter-American Council of Jurists, the Inter-American Cultural Council, and the Pan-American Union—the Secretariat of OAS—work under the supervision of the Council. In addition, the Charter of OAS provides for specialised inter-American conferences and organisations, a whole beehive of functional activities.

It is unlikely that, in the foreseeable future, international integration of the Western Hemisphere will outgrow the confederate pattern of OAS. In matters of collective security, the Charter of OAS provides as much co-ordination as is desired by the United States. In any major war between East and West, the dominant position of the Roman Catholic Church in most of the Latin American countries would automatically ensure their full co-operation in such a crusade. In the constitutional field, the United States has resigned herself to judging Latin American States by their friendly or unfriendly attitude to Washington and not to examine too closely the democratic

¹² See above, p. 518.

¹³ See above, p. 240.

¹⁴ See above, p. 449 *et seq.*

credentials of friendly—or dependent—but semi-fascist ruling cliques. Similar to the apologies for the Franco regime, ideologies regarding the 'unique', typically Latin-American and 'paternal' character of such despotic systems serve to assuage uneasy democratic consciences.

The roots of the trouble lie in the stranglehold of the owners of the great estates over most of the South American economies, in the absence of sufficiently large and independent middle classes and in the retarding influence of the Roman Catholic Church. As, however, the Argentine experiment of General Perón has shown, here, as elsewhere, the rise of a working class does not necessarily reinforce the movement towards democracy. However it is tackled, the chief problem of these countries remains their economic underdevelopment. Again, such influx of capital as is required will chiefly have to come from the United States.

Latin-American countries no longer complain of dollar diplomacy, but of the neglect they suffer in comparison with the more fortunate recipients of Marshall Aid. As in other underdeveloped countries, in which the need for economic, social and educational progress is only matched by the intensity of emotional nationalism, international functionalism appears to be the appropriate form in which the required assistance—and supervision—can best be administered.

EUROPE

It remains to deal with the potentialities of any further integration in Europe. The first problem is to agree on a definition of Europe. Short of open war or of a voluntary retreat by the Soviet Union, which would be equivalent to a diplomatic defeat of the first magnitude, the Eastern frontiers of Europe run today from the point where Russia and Norway meet *via* Sweden and through Germany and Austria to Yugoslavia, Greece and Turkey.

In the sphere of defence, the North Atlantic and Brussels treaty systems cover only part of this area. They exclude Sweden, Germany, Austria, Switzerland, the Iberian Peninsula and the European countries in the Eastern Mediterranean. Indirectly, some of these countries are linked with these defence organisations through unilateral engagements of all or some of the parties to the North Atlantic Treaty or by the fact that occupation forces are stationed there. This applies to Western Germany, Austria, Greece and Turkey.²¹ In addition, the United Kingdom is committed to the defence of Portugal by her ancient treaty of alliance.

Most of the States of this truncated Europe are also members of the Organisation for European Economic Co-operation.¹⁶ Spain and Yugoslavia are the chief exceptions.

Some of the European States are strongly linked with non-European States, like the United Kingdom through the British Commonwealth, or France and The Netherlands through their still rather precarious Unions with former colonial possessions. All of these powers are also colonial powers in their own right, as are Belgium, Portugal and Spain. To increase these diversities, some, like the Benelux countries are members of an economic union, while some, like the former Axis Powers and Switzerland are not members of the United Nations.

The Council of Europe. With the establishment of the Council of Europe, the structure of international co-operation in Europe became still more complicated. The Statute of the Council of Europe (May 5, 1949—Cmd. 7778) could hardly have been drawn up with any greater regard for the complete freedom of members from this phantom of a regional organisation.

The aim of the Council is defined as the achievement of greater unity between its members for the purpose of 'safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress'. Matters relating to national defence are expressly excluded from the Council's jurisdiction (Article 1).

The foundation members of the Council are the Benelux countries, Denmark, France, Ireland, Italy, Norway, Sweden and the United Kingdom. With a two-thirds majority of the Committee of Ministers, other European States can become full or associate members. Under the Statute, the latter are represented only in the Consultative Assembly, but not in the Committee of Ministers. At its August, 1950 Session, the Committee of Ministers decided in principle, however, that associate members could be invited to join it in a consultative capacity for the consideration of specific subjects and to take part in working parties of experts appointed by the Committee of Ministers.

The Statute does not lay down expressly that membership is limited to European or sovereign States. In order to be eligible, a State must accept the 'principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms' and be willing and able to 'collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I' (Article 3). Greece and Turkey were admitted.

¹⁶ See above, p. 603 *et seq.*

as full members, and Western Germany and the Saar as associate members. In 1951 the Federal Republic of Germany became a full member. Members are free to withdraw and, in case of serious violation of their obligations under Article 3, they may be expelled from the Council. A member which fails to fulfil its financial obligations to the Council may be suspended.

The chief organs of the Council are the Committee of Ministers and the Consultative Assembly. Both are served by the Council's Secretariat.

The Committee of Ministers holds the whip hand in the Council. It consists of the Foreign Ministers of each of the full members. The Committee's tasks are defined as considering any action required to further the aim of the Council. At the most, however, action means recommendations to the member States. Apart from matters concerned with the internal organisation of the Consultative Assembly, the Committee of Ministers decides 'with binding effect all matters relating to the internal organisation and arrangements of the Council'.

In matters styled 'important'—in an extremely relative sense—a qualified unanimity rule applies. In such cases as, for instance, regarding recommendations to member States, the unanimous vote of the representatives casting a vote, and of the majority of the representatives entitled to sit on the Committee, is required. Resolutions on the admission of full and associate members may be passed with a two-thirds majority of all the members of the Committee. Only in the case of minor procedural, financial and administrative matters does the simple majority rule apply. In principle and in practice, the Committee meets in secret conclave.

The Consultative Assembly is the 'deliberative organ' of the Council. The conclusions of its debates are to be presented in the form of recommendations to the Committee of Ministers (Article 22). Under the Statute, discussion is limited to matters within the scope of the Council, as defined in Article 1. In addition, such matters must either be referred to the Assembly by the Committee of Ministers with a request for its opinion, or have been approved by the Committee for inclusion in the agenda of the Assembly on the proposal of the latter. At the first session of the Assembly, Mr. Churchill led a forceful attack against this attempt to muzzle the town-meeting of Europe. The Committee of Ministers refused to consent to an outright revision of the Statute on this point, but agreed to suspend its veto on the agenda of the Assembly.

Representation in the Assembly is based on a system of weighted votes. France, Italy, the United Kingdom and Western Germany

have eighteen votes each, the Benelux countries, together, fifteen, Turkey eight, Greece and Sweden six each, Denmark, Ireland and Norway four each, and Iceland and the Saar three each. The method of choosing representatives is left to each government. Members of the Assembly may not at the same time be members of the Committee of Ministers. Recommendations to the Committee of Ministers and other matters which, apparently, were considered to be 'important' by the draftsmen of the Statute require a two-thirds majority of the representatives casting a vote (Article 29).

Ordinary sessions of the Assembly take place once a year and, without concurrence between the Assembly and the Committee of Ministers, must 'in no circumstances' exceed one month (Article 32). Extraordinary sessions may be convened only by the Committee of Ministers. At the First Session in 1949, the Assembly circumvented this provision by establishing a Standing Committee to function between its annual sessions. The President of the Assembly must convene it at least four times a year. In 1950, the Assembly held its Second Session in two parts, in August and November. These were two ways in which the Assembly ventilated its sense of frustration and discontent.

Major amendments of the Statute may only be proposed by the Committee of Ministers with a two-thirds majority, unless the Committee has referred the subject to the Assembly. Even in this case, the decision on whether such a proposal is to be submitted to the member States rests with the Committee of Ministers. An amending protocol comes into force on ratification by two-thirds of the member States.

It is hard not to be sarcastic on this creation. The draftsmen of the Council required forty-two Articles to say that, with the permission of the Committee of Ministers, the Consultative Assembly may make recommendations to the Committee of Ministers which, subject to the veto of any one Foreign Minister, this body will forward to the governments of the member States.

The two vital problems of post-war Europe are defence and economic reconstruction. The one subject is banned by the Statute. So long as the Organisation for European Economic Co-operation exists, any concern of the Council with the other must remain supererogatory. Attempts made at the first session of the Consultative Assembly of 1949 to achieve some co-ordination between the Council of Europe and OEEC failed.

The refusal by the Committee of Ministers was based on two grounds. First, membership of the two organisations is not identical. Austria, Portugal and Switzerland are members of OEEC

but not of the Council of Europe. Secondly—and this was not exactly flattering for the members of the Consultative Assembly—members of OEEC could not be expected to allow highly confidential information to be passed on to the Consultative Assembly. To sweeten the bitter pill, the Committee of Ministers decided at its session of March, 1950, to appoint a sub-committee to ‘consider, in consultation with OEEC, the important and complex problem involved in the development of exchange of information in one form or another between the two bodies acting in a state of mutual assistance, with due regard for their respective constitutions and functions’.

In 1950, at the Second Session of the Assembly, Mr. Churchill threw the issue of a European army into the debate. This effort, too, which, under the Council's Statute, was clearly out of order, fizzled out, and the Consultative Assembly had to resign itself to its statutory impotence. The argument that, in the sphere of defence, the Council of Europe would merely duplicate the work of the North Atlantic and Brussels Treaties Organisations would be more impressive if these Organisations could show greater positive achievements.

A careful survey by *The Times* Military Correspondent (November 11, 1949) shows how much uphill work will still have to be done before the French Army can become the key-stone of Europe's land defences. In connection with the meeting of the Defence Committee of the North Atlantic Treaty Organisation of April, 1950, Mr. Johnson, United States Secretary of Defence, hopefully announced that the ‘period of planning is finished. Now so much progress has been made that the moment has come for realising these plans.’ Yet in a subsequent analysis of military machinery of Western Union (*The Times*, July 28, 1950), *The Times* Military Correspondent still felt justified in referring to this redoubtable organisation as the ‘speculative and abstract proceedings of a debating society’.

At the Second Session of the Consultative Assembly, Mr. Boothby read out a Western Union *Communiqué*, according to which important manoeuvres had still to be carried out with ‘supposed’ formations. It was, however, left to Mr. Churchill, in his speech of August 11, 1950, to the Consultative Assembly, to put the position in plain words:

‘The Soviet forces in Europe, measured in active divisions, in air force and in armoured vehicles, outnumber the forces of Western Union by at least six or seven to one. . . . Two years ago the Western Union pact was signed and a number of committees were set up which, as M. Reynaud and others say, have been talking ever since. Inposing conferences have been held between military chiefs and

experts, and a pretentious façade has been displayed by the governments responsible for our safety. In fact, however, apart from the establishment of the American bomber base in England, nothing has been done to give any effective protection to our peoples from being subjugated or destroyed by the Russian Communist armies with their masses of armour and aircraft.'

It appears as if the red light of Korea has imbued the North Atlantic and Brussels Treaties powers with a new, and overdue, sense of urgency.¹⁷

On minor points, the Committee of Ministers relented. It agreed to give to the Assembly a consultative voice on the admission of new members to the Council of Europe and, in the ad hoc joint Committee of Ministers and of the Consultative Assembly, it established some informal machinery of co-ordination between itself and the Assembly. At the second session of the Assembly, the Committee of Ministers surpassed itself. It condescended to allow Mr. MacBride, the Foreign Minister of Ireland, to address the Consultative Assembly on behalf of the Committee of Ministers. Beyond this, it authorised M. Schuman to expound his Plan in a personal capacity to the Assembly.

Why should the European powers have troubled to establish such a weakling in the field of international institutions? It is argued that the Council of Europe is admirably suited to crystallise public opinion in favour of the further integration of Europe, and that this is the most that the Consultative Assembly, a body which is responsible to nobody in particular, can usefully attempt. Both arguments are hardly convincing. Public opinion can be roused best by action, but not by annual repeat performances of stale oratory. When speeches remain unheeded and are not followed by tangible results, frustration is the most likely outcome of such perennial efforts.

The criticism that the Consultative Assembly is not representative of national opinion in most of the member States of the Council of Europe is only too justified. Yet it was the governments of the founders of the Council who constituted the Assembly as the hybrid between an international parliament and a debating society that it is. Thus, again, we are driven back to the question: what was in the minds of the founders when they created this new regional institution?

The answer appears to be that, for the time being, there is no real urge inside Europe for any higher integration, but something had to be done to appease public opinion in the United States. Americans are prone to draw analogies from their own federal experiment and

¹⁷ See above, p. 528 *et seq.*

consider that a corresponding development would produce similarly beneficial results in Europe.

Some of the special features which made the federation of the United States possible have been discussed in a previous chapter.¹⁸ The nucleus of the United States federation consisted of British colonies with the same legal and political institutions. They shared common traditions, language and religion and, as Mr. Beloff rightly emphasised in an article on 'European Association' (*The Times*, May 4, 1950), in the fields of foreign policy and defence, these colonies had been accustomed to being ruled from a single centre: 'When the ties that bound them to Whitehall snapped they did not acquire sovereign independence, but found themselves at once in a subordinate status towards the Continental Congress under which they fought the war to its successful conclusion.'

Moreover, it required the American Civil War to settle finally the issue of federation in the United States. However much the Northern States accused Great Britain of partiality to the Southern Confederation during the Civil War, British policy of neutrality and control of the seas enabled the United States to fight out this issue in 'peace' without constant fear of intervention from the outside. Finally, in the United States, the Federalists had a considerable measure of popular support, and the federation drew additional strength from being launched in an under-populated country with vast untapped natural resources and from its association with an expanding national economy.

Any corresponding federation of Europe is faced with formidable obstacles. There is wide disagreement on the geographical scope of such a federation. Is the fact of the division of Europe to be accepted or are the United States of Europe meant to reconquer the *irredenta*? Germans of all parties, except the Communists, leave little doubt that they have not given up their hopes for the reunification of Germany. In his speech of August 17, 1949, at Strasbourg, Mr. Churchill lent his weight to the proposal that, in the Council of Europe, some seats should be set aside for the peoples of Europe who are now the political prisoners of the Kremlin, as a symbol of 'our intention that the Assembly shall one day represent all Europe west of the Curzon line'. In a subsequent address to the United Europe Movement in the Albert Hall (July 21, 1950), Mr. Churchill returned to the theme: 'The Europe we are planning must ultimately unite all European peoples, including those now behind the Iron Curtain.' It is hard to see how, without a major war, this objective can be attained.

The next question is what is to be the function of such a united Europe. Many would agree with the tenor of a wartime memorandum, written by Mr. Churchill in October, 1942, and quoted by Mr. Macmillan at the first session of the Consultative Assembly of 1949:

‘I must admit that my thoughts rest primarily in Europe—the revival of the glory of Europe—the parent continent of the modern nations and civilisation. It would be a measureless disaster if Russian barbarism overlaid the culture and independence of the ancient States of Europe. Hard as it is to say now, I trust that the European family may act unitedly as one under a council of Europe. I look forward to a United States of Europe in which the barriers between the nations will be greatly minimised.’

In his address to a joint meeting of the Upper and Lower Houses of the Netherlands Parliament (October 11, 1946), General Smuts voiced similar hopes:

‘Here you have the most advanced and developed group of the whole human race. Its total resources in manpower, natural resources, industrial equipment, and communications are unrivalled. They are now split up into a large number of small national units, which in peace often mutually frustrate each other, and in war make their own security more doubtful. Together they would form an enormous unit and a market of unrivalled dimensions. Under a union there may be a flowering of European genius such as may out-rival the most glorious periods of the European past. The glory that was Greece and the grandeur that was Rome may be puny in comparison with this new outburst of the European spirit. The combined material and cultural advance may lead to standards of life and culture such as the world has never seen. The greatness of Europe lies before and not behind her.’

Yet, as fate willed it, both these statesmen took part in the formation of Allied decisions the result of which was to split Europe.

Whatever degree of integration this truncated Europe may attain, it cannot be, as, in an unguarded moment, Dr. Adenauer suggested (speech at Cologne of May 21, 1950), a ‘third force’ between the two giant powers. Moreover, no Europa-nostalgia can alter the decisive fact that the world centre of gravitation has shifted away from Europe. It may be a matter of argument whether, today, one such centre exists or whether we have exchanged one centre for the polar tension between two such centres. Yet to argue that present-day Europe is any more important in terms of world strategy than any other area along the world frontier appears to be unrealistic. Its industrial output and potentialities are still greater than those of any other comparable part of the world. Yet this alone is not decisive.

The question is how much of it would be likely to survive any major war. As matters stand, the outlook is grim. This forecast

could only be reversed if a united Western Europe were militarily strong enough to carry any war against the Soviet Union at the shortest notice deep into the security belt of the Soviet Union. Even if Europe were federated, it could aim at such an objective only with the full backing of the United States. Thus, at the most, a United Europe would be a stronger junior partner of the United States than the present agglomeration of sovereign States. By being more self-reliant, it would strengthen the Western element in the existing system of world power politics and tend to divert Soviet pressure to softer and more promising quarters. The creation of the United States of Europe would not, however, affect the bipolar character of world politics.

In the eyes of some of the advocates of a United Europe, it is not so much the functions of Europe in international relations that matter, but the opportunities that a United Europe would present to their own countries. From this point of view, the United Kingdom can expect nothing but moral leadership and difficulties in maintaining her position as *primus inter pares* in the British Commonwealth. France can only hope to maintain a leading position in this venture if she succeeds in persuading the United Kingdom to balance the growing power of Western Germany.

In case the United Kingdom should decide to keep aloof from such a venture, the place of the leading nation in the United States of Europe would probably fall automatically to Western Germany. She would then achieve by other means at least part of the Hitlerite war objectives. As it was put by a German speaker, Dr. Bucerius, at the meeting of the United Europe Movement in the Albert Hall on July 21, 1950, 'Germans know that they have nothing to lose but everything to gain in a united federal Europe'. This, together with the potentialities of European federation for a renewed *Drang nach Osten*, largely explains why so many former Nazis are today such ardent Europeans and why, on July 26, 1950, the *Bundestag* adopted unanimously—with the exception of the Communists—a motion put in the name of all the parties, calling for a federation of Europe under a supra-national authority.

Perhaps it is necessary to qualify this analysis by adding another important factor which works in the same direction, and not in Germany alone: political Roman Catholicism. All over the Continent, the Black Front has re-established itself in key positions. It has not been lost on the leaders of this power-conscious movement that Roman Catholics would have a majority in such a federation and pull very much greater political weight than their Protestant counterparts.

In the economic field, too, federation holds out tempting possibilities to an overpopulated country like Germany and its market-hungry and stifled economy. The overflow of Germans into underpopulated countries, like France, would be one way of solving the question of the unending stream of German refugees from the East. The establishment of a European customs union, too, would be highly advantageous to the German export industries, but have a depressing effect on wages and standards of living in countries which rely on their protective tariffs to maintain their systems of social security.

This very issue has produced strange realignments on the domestic scene. It has made labour and trade unions conscious of the positive sides of national sovereignty and transformed some of their opposite numbers into enthusiastic federalists. Both sides cannot help noticing that any federation of Europe would show considerable anti-Socialist majorities. Thus, a European federation looks like a safe investment of capitalist policy.

This was long foreseen by the author of *The Road to Serfdom* (1944). In 'Economic Conditions of Inter-State Federalism' (5 *The New Commonwealth Quarterly*, 1939), Professor Hayek came to the comforting conclusion that States 'should be willing to give the government of a federation the power to regulate their economic life, to decide what they should produce or consume, seems neither probable nor desirable. Yet, at the same time, in a federation these powers could not be left to the national States, therefore, federation would appear to mean that neither government could have powers for socialist planning of economic life.'

In the case of the United Kingdom special problems arise from its membership in the British Commonwealth of Nations. Any European federation would inevitably transfer the decision in political matters from London to organs in which the United Kingdom might be in a lonely minority. A customs union would eliminate the already decreasing margin of preferential tariffs which are the economic props of the Commonwealth.

This is what Americans understand by the 'economic integration' of Europe. In the formulation of Mr. Hoffman, former United States Economic Co-operation Administrator (speech at the meeting of the Council of OEEC, October 31, 1949) 'the substance of such integration would be the formation of a single large market within which quantitative restrictions on the movement of goods, monetary barriers to the flow of payments and, eventually, all tariffs are permanently swept away'.

The British reply was given squarely by Sir Arthur Salter in a

searching series of articles on *Western Europe* (*The Times*, May 16 and 17, 1950): 'If a customs union, which would mean the abandonment of Imperial preference, is an integral part of European union, Britain will stand out, and without her it cannot succeed.' Even so staunch a supporter of a united Europe as Mr. Churchill stated unequivocally in the House of Commons (June 27, 1950): 'I cannot conceive that Britain would be an ordinary member of a federal union limited to Europe in any period which can at present be foreseen.'

The statement by the National Executive Committee of the British Labour Party on European Unity (1950) reaches the same conclusion: 'A complete economic Union of Western Europe must . . . be excluded, since it would demand an unattainable degree of uniformity in the internal policies of the member States. If based on *laissez-faire* it would not only impede the bridging of the dollar gap but also cause fatal political upheavals. If a complete economic Union is impossible, a complete political Union is thereby also excluded.' On this point public opinion in the United Kingdom is united. Yet it is not so easy for Continentals to realise this fact; for Britain's spokesmen use a bewildering terminology. When Mr. Bevin speaks of Western Union, he means confederation. When Mr. Churchill speaks of the United States of Europe he means union. Yet the essential thing is that both mean the same.

So long as federation of Europe is federation without the United Kingdom, it means in the present loose alignment of the Western world domination of the federation of Europe by Western Germany. Mr. Churchill's argument for British participation in the discussions on the Schuman Plan holds equally good for any Continental federation without Great Britain: 'The absence of Britain deranges the balance of Europe. I am for a reconciliation between France and Germany and for receiving Germany back into the European family, but this implies, as I have always insisted, that Britain and France should in the main act together so as to be on even terms with a Germany which is so much stronger than France alone' (House of Commons, June 27, 1950).

It is unlikely that France, the Benelux and Scandinavian countries would be willing to join an exclusively Continental federation. In a strange way, it would revive the division of a medieval writer according to whom *imperium* belonged to the Germans, *sacerdotium* to the Italians and *studium* to the French. In the absence of any wider federation which might overcome these dangers of a purely Continental federation, the mind turns necessarily to less ambitious schemes on a functional basis.

The members of OEEC have already decided to continue this

Organisation after Marshall Aid comes to an end. Liberalisation of customs tariffs and relaxation of quota systems had already been found a practical proposition between the members of OEEC and the signatories of the General Agreement on Tariffs and Trade of 1947.¹⁹ As suggested in the Stikker Plan, announced by the Netherlands Minister for Foreign Affairs and the 'political conciliator' of OEEC, at the meeting of the Council of OEEC on June 2, 1950, further progress in this direction is desirable. The European Payments Union is considered by all concerned to be beneficial, and free convertibility of the currencies of the OEEC countries is not an impossible goal.

The Consultative Assembly of the Council of Europe has already made a beginning towards the codification of human rights in a setting that is more promising than that of the United Nations.²⁰ The Committee of Ministers thought it, however, necessary to make three significant changes in the Assembly's draft Convention. On Mr. Bevin's insistence, the Committee deleted the Article on the obligation of States to hold free elections and to allow for the formation of an opposition. It further made it optional for signatories to recognise the competence of the European Commission of Human Rights to receive petitions from groups or individuals under their jurisdiction on alleged breaches of the rights which are protected by the Convention. Finally, a Colonial Clause was added which leaves it with each signatory whether the Convention is to apply to any of its colonial territories. With these alterations, the Committee of Ministers signed the European Convention on Human Rights on November 4, 1950. The Convention is open to signature by the members of the Council of Europe and will come into force after the deposit of ten instruments of ratification.

Agreements on Social Security, like those which the members of Western Union have concluded on Mr. Bevin's initiative, could be negotiated on a wider basis and be incorporated into a European Charter of Social Security. Greater freedom of the movement of persons and goods, a European Patent Office and greater educational and cultural co-operation between the members of the Council of Europe would all be modest, but constructive, advances. It is difficult to see why the Council of Europe should not be charged with the responsibility for initiating such activities. Final decision on draft conventions of this kind could still rest with the governments and parliaments of each member State.

The Council would then resemble, on a regional basis, other quasi-legislative international institutions such as the International

¹⁹ See above, p. 608 *et seq.*

²⁰ See above, p. 627 *et seq.*

Labour Organisation. If the Consultative Assembly were entrusted with these functions, it would have to be reconstituted, but not necessarily by a formal revision of the Statute. It would suffice if other governments took as much care as does the British Government to represent all shades of national opinion.

Then the problem would arise with greater urgency whether the practice of excluding Communists from national delegations should be continued. Although there is room for disagreement, much is to be said for this practice. Soviet-controlled Communism is not a shade of national opinion, but the fifth column of another power. Even in cases in which it is not Soviet-controlled, as in Yugoslavia, it is a totalitarian movement and is contrary to the aims of the Council as defined in Article 1 of the Statute. Tolerance towards the enemies of democracy is not liberalism but decadence. Communists are the first to understand such language. Any militant creed respects only those who act in the same spirit against their enemies.

Necessarily, any such snail-pace development has little emotional appeal. Yet whatever else may be said in favour of a political federation of Europe, it has not yet, as an ideal, kindled the imagination of the peoples of Europe.

The Schuman Plan. It is to the credit of M. Schuman to have tried to break this vicious circle. The Schuman Plan 'seized the imagination of an increasingly hopeless Western Europe because it was the first real effort of any government to break the icy fear which nipped the Continent, to reanimate the movement, and, above all, to solve the eternal German problem' (Mr. Boothby in the House of Commons, June 27, 1950).

In the first notification of the scheme to Mr. Bevin by the French Ambassador (May 9, 1950—Cmd. 7970), the gist of the French Cabinet's decision was summarised as a proposal that 'an Authority should be created which should take over control and production of all steel and coal in Western Europe. It would not have ownership rights, but it would have controlling power.'

The crux of the scheme is the nature of the 'Authority' and of its jurisdiction. In a subsequent *Communiqué*, transmitted to the Government in the United Kingdom later on the same day, this 'common higher Authority' was envisaged as a body 'composed of independent personalities appointed by governments on an equal basis'. The chairman was to be chosen by agreement between the Contracting Parties. The decisions of the Authority were to have executive force in all member countries. There was to be an appeal—~~there was not said to whom—~~against any decision of the Authority.

The Authority was to be entrusted with the management of the scheme. Its functions were to include the modernisation of the production of coal and steel ; the supply of these commodities on identical terms to the markets of member countries ; the development in common of export of coal and steel to third States, and the equalisation and improvement of living conditions of workers in these industries.

In the Memorandum of the French Government of May 25, 1950, the proposed action was summarised as meant to ensure the pooling of European coal and steel production. According to a further French Memorandum of May 30, 1950, the Authority was to achieve this objective within the limits of a statute, but ' independent both of Governments and of individual interests '. In the view of its authors, the scheme amounted to a ' partial fusion of sovereignty ' between the member States.

During the following three weeks, sterile negotiations took place between France and the United Kingdom on the question whether governments participating in the conference to be held should accept the principle of the Plan in advance, but remain free regarding its implementation, or take a sympathetic attitude, but remain uncommitted until they could survey the whole scheme in perspective. In the end, the British Government decided to leave it to France, Germany, Italy and the Benelux countries to go ahead on the basis of the first alternative and to be kept informed of the progress of their negotiations.

After prolonged negotiations, the six Continental countries signed the Schuman Plan Treaty on April 18, 1951. On ratification, the Plan will come into operation in three stages : a preparatory period of six months, a transitional period of five years, and the final stage, lasting for the rest of the fifty years for which the Treaty has been concluded.

The concrete object of the Treaty is to contribute, in harmony with the general economic policies of the member States, to economic expansion, to the development of employment, and to the improvement of standards of living, through the establishment of a single market in coal and steel.

The scope of the Plan will emerge from a comparison of the production figures in coal and steel of the Schuman Plan countries with those of the United States and the Soviet Union. According to the production figures of 1949 (UN Statistics, published June 9, 1950), the Schuman Plan countries including the United Kingdom produced 429 (and without the United Kingdom 210) million metric tons of coal and 42 (or 26) million tons of steel. During the same period, the United States produced 431 million tons of coal and 70

By a Protocol signed on the same day as the Treaty, provision is made for co-operation between the Community and the Council of Europe. The member Governments are invited to recommend to their Parliaments that the members of the Assembly should preferably be selected from the representatives in the Consultative Assembly of the Council of Europe. The Assembly and the High Authority are to send annual reports to the Council of Europe. The High Authority is also required to inform the Council of Europe of any action taken by it on recommendations made by the Committee of Ministers of the Council of Europe.

Any proposal to modify the provisions concerning the powers of the High Authority must be proposed jointly by the Council of Ministers and the High Authority, deciding by a five-sixths majority. Then, the proposal must be submitted to the Court which, if it considers it compatible with the Treaty, will refer it to the Assembly. The proposal comes into force if it is supported by three-quarters of the members present and voting, provided such votes amount to at least two-thirds of the whole membership.

After the completion of the transitional period, each member government or the High Authority is entitled to propose amendments for submission to the Council. An amending conference will be called with the approval of two-thirds of the Council. Amendments require ratification by all member States.

Before this scheme can be brought into operation, much water will have to flow under the bridges of the Seine and the Rhine. First, it will have to attain ratification by all six of the member States. Then complicated negotiations will have to be concluded with non-member States with considerable interests in the single market area and other markets. Exemptions will have to be obtained from most-favoured-nation treatment and non-discrimination clauses under bilateral and multilateral treaties. Finally, the Agreement on the International Ruhr Authority will have to be drastically revised, if not rescinded. Even then, the Plan will only be in its transitional stage and, in a fast-moving age, much may happen in five years.

In its final form, the Schuman Plan is a much more modest proposition than was originally intended. In the French *Communiqué* of May 9, 1950, it was asserted as one of the effects of the Plan on Franco-German relations that 'the solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible'. Actually, as the Plan now stands, war between any of the participants would still be materially possible. It is unlikely, but for reasons which could have been equally operative without the Schuman Plan :

the growing dependence, military and economic, of Western Europe on the United States.

The powers of the High Authority have been so considerably pared down that the partial fusion of sovereignty originally envisaged does not appear to be more formidable than it was in fact under corresponding cartel agreements of the inter-war period. The change is one of emphasis. Then, the coal and steel industries took the initiative, but worked in close consultation with their governments. Now, the governments have taken the matter into their own hands, but necessarily have to weigh carefully the advice received from the quarters most directly concerned.

From the point of view of the relative importance of heavy industry in national economy, Belgium and Luxemburg are in a position comparable with that of France, Western Germany and the United Kingdom. The Belgian government, although of the Right, has qualms similar to those of both British Labour and the Conservative opposition. The corresponding commitments of Italy and The Netherlands would be much less decisive. It is, therefore, apposite to explore what the countries most directly affected by the Schuman Plan expect from it. If governments like the French advocate, and others like that of Western Germany enthusiastically welcome, such a scheme, it is advisable to accept their official explanations with some reserve. French policy towards the Saar since 1945 is too much akin to the post-1919 policy of France,²¹ and those in charge of Western Germany are too identical with the centre and right wing politicians of pre-Hitlerite Germany. Without further proof the disinterestedness of their intentions cannot be assumed. If examination should prove that by the realisation of any of these plans, each of these parties cannot possibly improve its own—as distinct from their common—lot, then such a test will let the scheme appear in all the greater glory. This, however, remains to be seen.

In the first place, the somewhat precipitate manner in which M. Schuman launched his Plan deserves attention. Was this Plan a sudden inspiration or in line with earlier schemes? This raises the question of the parentage of the Schuman Plan.

As long as Germany still expected to win the First World War, 'annexionism' was rampant in German public opinion. The German Supreme Command gave its support to plans for the open or veiled annexation of the French iron district of Briey and Longwy, and of Belgium and Luxemburg. Customs and production unions under German domination were an integral part of the more 'moderate'

²¹ See above, p. 670.

proposals. The German Social Democrats alone dissociated themselves uncompromisingly from the day-dreams of German political and economic imperialism. In the post-1919 period, while French hegemony in Europe was a reality, Poincaré had similar ambitions for France. During the French occupation of the Ruhr, the German coal and steel barons, too, flirted with such schemes.

The era of Locarno provided a suitable political background for at least a European steel cartel. This was established in 1926 between the steel producers of Belgium, France, Germany, Luxemburg and the Saar. Its purpose was to reduce the overproduction of steel and to eliminate expensive competition between the participants in the export markets. This cartel, too, was hailed by its protagonists as the first step towards the United States of Europe.

In the chaos of the world depression of 1930-31, however, the first Steel Cartel collapsed. In 1933, agreement on a more comprehensive cartel was reached. In addition to the members of the previous steel cartel, it included Austria, Czechoslovakia, Poland, the United Kingdom and the United States. This world steel cartel comprised all the major steel producing countries with the exception of the Soviet Union. The penalty clauses of the agreement were drafted in such a way that, in effect, the other members of the cartel subsidised Nazi rearmament; for the German group received a bonus for every ton of steel which was diverted to the home market instead of being included in its export quota. Until the United States government intervened, the agreement was used after the outbreak of the war by the German group to supply its South American customers from United States members of the cartel and to pocket foreign exchange by way of commissions for such sales.

During the Appeasement Period, and still more after Hitler's victory over France, French heavy industry played from weakness the card of a far-reaching fusion of the European economies under German leadership. The only thing that changed after the Second World War was the balance of power. It was now for Western Germany to plead the unfairness of an international authority limited to the Ruhr. As after the First World War, Germany claimed equality of rights and, as before, this argument proved persuasive.

Mr. McCloy, the United States High Commissioner in Germany, was one of the first to associate himself openly with a 'general scheme of joint responsibility for the heavy industry of Britain, France, Germany, the Saar and Luxemburg' (*The Times*, October 18, 1949). There is no published evidence of whatever informal discussions may have taken place on this subject between the United States and any of the European countries. To judge by Mr. Bevin's

surprise at the French proposal of May 9, 1950, the United Kingdom was not one of the governments which was consulted. If M. Schuman sprang the idea on the world without even prior informal consultation with the United States, then it was a happy coincidence that, in his speech of May 10, 1950, to the Pilgrims in London—likely to have been prepared before May 9—Mr. Acheson saw the solution of Europe's economic difficulties in 'co-operative international arrangements'.

Whether or not M. Schuman's Plan was inspired from Washington—and it might well be thought that increased United States commitment in the French war in Indo-China called for a corresponding French initiative in Europe—M. Schuman played a winning card. His move made it obvious to the whole world that France took the long-wanting initiative to the real integration of Western Europe. President Truman was quick in acclaiming the Schuman Plan as an 'act of constructive statesmanship' (May 18, 1950). If the Plan should fail or remain incomplete, the responsibility would not lie with France.

Yet, what would be the position of France if the Plan should attain complete fruition? Co-ordination of British and Continental heavy industries would tie the United Kingdom still more closely to the Continent and strengthen the hands of those who, in case of attack from the East, understandably wish to see Western Europe effectively defended and not merely liberated in the course of a Third World War.

Furthermore, it was only a question of time until Western Germany would be freed from all her restrictions and attain her former superiority over France. Was it not, therefore, common sense to reach an irrevocable settlement with Western Germany while it was still possible to negotiate with her from strength? For the time being, the Occupation Statute is still in force. Within narrow limits, the International Ruhr Authority still operates. Last, but certainly not least, the Saar is still under French control. Combined with the French output, the coal production of the Saar amounts to two-thirds of that of Western Germany. If the Saar were reunited with Germany, the combined production of Western Germany and the Saar would be more than double the output of the French mines.

Similarly, in the case of steel, the production of the Saar just tips the balance of steel output in favour of France. Moreover, there is the danger of renewed German competition in the export markets in coal and steel, and the indirect support granted by German heavy industry to other German export industries by means of lower prices on the home market.

In its original form, the Schuman Plan would have secured France a safe market in coal and steel and would have enabled French heavy industry to level up wages without endangering its profits. This is no longer so certain. It is suggestive that French steel is between 10 and 15 per cent more expensive than German steel. Finally, in any capitalist country, coal and steel are the most powerful citadels of private enterprise. The Schuman Plan leaves the question of ownership open. This is not, however, what matters most to the neo-feudalist magnates of the managerial class. They are not primarily concerned with the fate of the shareholders, but with power. Control is the decisive point. Who else but their nominees would be the 'independent' experts who were to make the coal and steel industries of Europe safe against governments and 'individual interests' alike? Perhaps as a concession to such criticism, one or two moderate members of the higher trade union hierarchy might be added to this exclusive circle.

The Schuman Plan has other but equally attractive features for the government of Western Germany. Once Western Europe were a functional unit, and decisions were transferred from governments to 'experts', it would be even more difficult to maintain discrimination against German heavy industry on security grounds. Western Germany would become the Eastern bastion of Western Europe. It could then be left to the dynamic of events to re-establish German preponderance. If the United Kingdom kept aloof, this would simplify the task still further.

Moreover, on this functional level, it would be comparatively easy to undo the modest decartelisation measures which have been carried out by the occupation authorities in Germany. Finally, in Germany as elsewhere in Western Europe, the threat of nationalisation hangs over the heads of heavy industry. Separation of ownership and control, the latter firmly held by their own representatives, recommends itself as much to the governmental outposts of German heavy industry as to those in other countries of similar complexion.

The Pleven Plan. If it were still necessary to reduce the functional approach *ad absurdum*, the Pleven Plan for an integrated European army under a European Minister of Defence achieved this purpose. The proposal means one of two things. Either the European Council of Ministers and the European Assembly, to which the Minister would be responsible, would have powers to organise and equip a European army and to decide on its use, or these powers would remain with the States concerned. In the former case, the States which participate in the scheme would have established a federation for purposes of defence. In the latter, whatever the nomenclature, the new organisa-

tion would be another confederation and be unlikely to achieve more than the North Atlantic Treaty Organisation.

In fact, however sincerely meant the Pleven Plan might have been, it could not help fulfilling a tactical function. It softened the blow of initial French refusal to agree to the American proposals for the rearmament of Western Germany. The French government had learned the lesson that when you must say 'no' it is advantageous to couple it with a constructive counter-proposal. Somebody else is bound to reject it. If nothing else is achieved, you then at least succeed in diverting attention from your own negative attitude and may enjoy the satisfaction of still basking in the role of the lonely and misunderstood vanguard of 'progress'.

Thus, whether approached from a political or functional point of view, the ultimate issue remains the same: international co-operation on the present level, with all the vital questions reserved to a national veto, or nuclear federation. There is practically unanimity in the United Kingdom that any exclusive federation with the Continent, be it political or functional, is out of the question. Western Europe without the United Kingdom would be merely an inflated Western Germany. This solution is unacceptable to the countries of Western Europe. They still remember the blessings of Hitler's Europe too vividly. Neither the Council of Europe nor the Schuman or the Pleven Plans is the answer to this dilemma. It can be found only in a wider setting.

THE NUCLEAR PATTERN: II. FEDERAL INTEGRATION

'Man is not a helpless creature who must await an inexorable fate. It lies within our power to take action which, God willing, can avert the catastrophe whose shadow hangs over us.' Mr. Acheson (Fifth General Assembly of the United Nations, 1950).

IN the years immediately preceding the Second World War, and during its first phase, international federalism was the fashion of the day. In some ways, it was the 'non-violent revolution of upper-income respectability' (L. Gelber, *Peace by Power*, 1942). After Mr. Clarence Streit's clarion call for *Union Now* (1939) had subsided, international functionalism claimed a fair number of converts from the federal school. In the last phase of the War, the perennial pattern of peace by power re-emerged. This time, the trinity of the United States, the Soviet Union and the British Commonwealth was to guard world peace in the post-war era to come.

When, after victory, the Soviet Union set methodically to work to shatter the illusions of Dumbarton Oaks and San Francisco, a tired Western world slowly settled down to the task of reorganising its own half of the globe and to improvise its defences against unlimited Soviet expansion. Growing awareness of the implications of further political or 'functional' integration of Europe put the British Government and public opinion in the United Kingdom on their guard against these Continental and American-inspired plans. They were felt to be threats to the very existence of both the British Commonwealth and of the British system of social security. Uncomfortably, the British people became aware of the fact that the ultimate fate of any United States of Europe depended on its decision. The instinctive reaction in the United Kingdom against plans for a federation of Western Europe and against the Schuman Plan in its original form was well justified. Yet the British Government and public opinion alike conspicuously failed to provide bewildered Continentals and Americans with any constructive alternative. To say 'no' with more or less good grace is sometimes necessary. Yet, as a rule, it is not enough. By too exclusive association with Europe, the federal pattern has become unduly discredited in British eyes. It deserves to be re-examined in a wider and less land-bound setting.

CONDITIONS OF INTERNATIONAL FEDERATION

Past and current experiments with federations permit some cautious generalisations on the conditions on which the success of this pattern depends.

First, a sufficient number of people in key positions or a substantial body of public opinion in each of the potential member States must be convinced that the federation will fulfil more adequately than any of these States in isolation the functions that may be entrusted to such a supra-national authority.

Secondly, to make the federation effective, it is necessary to entrust it with a minimum of functions—responsibility for foreign policy and defence—and to grant it the financial resources which are required for the discharge of these functions.

Thirdly, federation is only feasible between States which have a modicum of ethical values and institutions in common.

In post-1945 international society, these three conditions are at the most fulfilled within each of the world's halves. The Soviet Union and the various people's democracies can survive as totalitarian States only so long as they can keep their nations sealed off from contact with the free world. It would be idle to expect their rulers to commit political suicide by agreeing to a world federation which would sweep away their police States. Nothing less would suffice. Democratic States find it hard enough to tolerate a situation in which everything which they hold dear is persecuted without mercy and with impunity in the other half of the world. To federate with the directors of secret police forces, the managers of concentration camps and the oppressors of free thought, speech and print would mean more than to tolerate the existence of these nefarious systems. It would amount to their formal legitimisation. Common membership in the United Nations goes far enough.

Admittedly, any non-universal federation could not be an alternative to power politics. It might, however, still provide a greater incentive to joint efforts for defence and for the constructive tasks ahead than the present state of international organisation. Faced with the danger of military aggression on an international frontier from the North Cape to the Far East, regional defence alliances here and there are pitiful substitutes for co-ordinated federal defence of the territory of a union in which all stand for all. Competitive stock-piling of scarce raw materials, and inability to agree on at least a standard rifle for supposedly integrated defence forces are additional reminders¹ of the shortcomings of this pattern. Confronted with the

¹ See above, pp. 521 *et seq.* and 770.

enormous tasks of developing the many hinterlands of the Western world and of making them immune against Communist infiltration, greater pooling of resources and man-power is required than is likely to be achieved by loosely knit coalitions between sovereign States.

These arguments would apply to the whole of the non-Soviet world. Still, it is hard to imagine a federal union of such dimensions as a practical proposition. Fear is the only factor which unites all these nations. This negative driving force may be powerful enough to bring about defensive alliances and a modicum of international functional co-operation. Yet, this area lacks the emotional appeal which springs only from common values, traditions and institutions. The optimum area of federation in the Western world is still smaller than the whole of the non-Soviet controlled world. Conversely, it is considerably larger than the British Commonwealth of Nations, the Western Hemisphere, or Western Europe.

ATLANTIC UNION

The centre of gravity of the Western world is in the Atlantic area. The North Atlantic Treaty Organisation and the Organisation for European Economic Co-operation, linked with the United States by her generous help to Western Europe, are visible signs of a trend towards closer co-ordination of this area. It may even be thought that, pragmatically and in all but name, an Atlantic union is already in the making, and that nothing can be gained--and very much lost--by any attempt at over-formalising these relations. If, however, the material and spiritual conditions of federation were fulfilled, there would be tangible advantages in a more articulate expression of Atlantic unity.

If for no other reason, a formal union would recommend itself because the existing links between the nations which are united by these functional institutions can hardly claim to appeal to popular imagination. In an address to the American Society of International Law (April 27, 1950), Mr. John Foster Dulles rightly stressed this point: 'The need today is for action that dramatises the capacity of the free world to defend itself and to enlarge itself.' The Western world needs a visible symbol of its inner unity, a focus for its pent-up loyalties, and a more attractive vision than the frontiers of the existing Western States. Admittedly, this is less true for the Anglo-Saxon nations than for those of continental Western Europe. It, therefore, appears apposite at this stage to explore more fully the merits of a more formal Atlantic Union.

Even such a federation as an Atlantic Union should not imply

that it should be limited exclusively to Atlantic nations. The North Atlantic Treaty Organisation has already shown that such terms need not be too literally employed. The name, however, puts the proper emphasis on the focal area. This is neither the Pacific nor the Continent of Europe but the Atlantic. On both sides of the North Atlantic live nations which share the fundamental truths and values of Christianity. They have given a concrete, and not too widely differing meaning to democracy, the rule of law and human rights. With differences in emphasis, and varying degrees of success, they all attempt to reconcile capitalism with social security, and they all look to Washington for military and economic help to help themselves.

Does this mean that the members of the British Commonwealth and the States of Western Europe should apply for admission to the United States of America or that the United States and the States of Western Europe should become members of an inflated British Commonwealth? Nothing quite so grotesque is suggested. Americans freely advocate the union of Europe. They would, however, consider it a nightmare if their President were elected by a non-American majority and their Senate and House of Representatives were swamped with members *prima facie* suspect of indulging in un-American activities. The British Commonwealth might be able to digest The Netherlands and the Scandinavian States, should they desire such more intimate association. Yet round table conferences at which the Prime Ministers of India, Pakistan and Ceylon sit side by side with Dr. Malan are already sufficiently complex to make it somewhat undesirable to swell their number by the addition of their French or Western German counterparts.

These forbidding spectres would disappear into thin air if the Atlantic Union were composed of only three constituent members: the United States of America or the Organisation of American States; the British Commonwealth and Empire, and a European Union. Without unduly forcing the pace, such an Atlantic Union could immediately take over the functions of foreign policy, defence and protection of democratic institutions, the rule of law and human rights in all the member States.

Compared with narrower plans for a United States of Europe, this scheme would have some tangible advantages. The slightly ambiguous situation of the United States as the hegemonial power in the Western world, held back from any abuse of her power only by her own self-restraint, would be transformed into the healthier position of *primus inter pares*. The character of the British Commonwealth as a distinct unit would be preserved. The existence of the

Atlantic Union would obviate the centrifugal trends in some of its member nations towards the United States, and United States pressure on the United Kingdom for a too close association with Western Europe would cease. If a European Union were a constituent member of the Atlantic Union, the Anglo-Saxon powers would no longer have to guard against German preponderance in a West European federation. They would also receive an effective guarantee that this Continental association would not relapse into wishful thinking about itself as an imagined third force between themselves and the Soviet Union.

Some of the Continental States which still shudder at the idea of ever again coming under German control and whose way of life is more akin to the British than to that of the rest of the Continent, might be given the option of entering the British Commonwealth. This might prove especially attractive to The Netherlands and to the Scandinavian countries. They share, too, with the United Kingdom the ideal of the service State and are already members of the sterling area. Ireland could be left to choose between membership of the European federation, her re-entry into the British Commonwealth or a closer association with the transatlantic partner in the Atlantic Union. In the two last-mentioned eventualities, it might even be possible to re-establish Irish unity, one of the more embarrassing themes of each session of the Consultative Assembly of Strasbourg.

France and the other nations who suffered from the misdeeds of the Third Reich could bury their fears of the *Furor Teutonicus*. They would know that whatever influence and power Germans might acquire in the European Union, they would always be controlled by the two other constituent members on the level of the Atlantic Union. Thus, German driving power and dynamism would have full scope. At last, however, it would be harnessed to a team of nations which understand better the arts of *savoir vivre* and of community life. In their turn, Germans would cease to be only second-class Europeans. By becoming citizens of the Atlantic Union, they would finally be freed from the sign of Cain, which, as yet, still marks the aggressors in two world wars and the butchers of Auschwitz, Belsen and Ravensbrück.

In the setting of the Atlantic Union, the nations of Western Europe would regain an invaluable asset which, to such a large extent, they have lost: their purpose in life. To be a Frenchman, Italian or Western German means preciously little today to the masses on the Continent. To be able to say: *Civis Atlanticus sum*, means very much more than the somewhat anaemic E-sign of the European Movement. Membership of the Atlantic Union holds out

a vista and hope of a world-wide brotherhood with ideals and standards of its own and with a reserve of overwhelming and invincible power.

Through an Atlantic Union, its members and, particularly, its Continental members, would obtain the maximum freedom from fear that is conceivable in a split world. To make an area one territorial unit for purposes of defence is to give its population the strongest guarantee against any part of it being reduced to an expendable security zone or battlefield. Then, another vexing problem, too, would solve itself. Without risk to her own security, the United States could hand over to the federal organs of the Union her most cherished and most embarrassing possession: the atomic bomb.

It would be dishonest to pass over or to make light of the question of Eastern Germany and of Eastern Europe. This problem poses itself as acutely to an Atlantic Union as to any merely Continental federation. Ultimately, the issue whether these countries are to be written off or to be regarded as an unredeemed *irredenta* can only be answered by those in charge of the Union's foreign policy. It would, however, be equally disingenuous to hide the only price at which, in all likelihood, these territories can be reclaimed for the Western world: a third world war. Anything that would survive the ebb and flow of such a prolonged struggle would hardly be worth liberating. The longer the present division between free and captive Europe lasts, the more permanent it becomes.

To take such a negative line is harder on Germans and Austrians than on anyone else. Yet they should remember that, without Hitler's aggression against Czechoslovakia, Poland and the Soviet Union, the Russians would not now man their security zones in Eastern Germany, Austria and in the Eastern satellite States. Germany herself is not only responsible for her own division and for that of Austria, but also for the ultimate enslavement of the East European States by the Soviet Union. By their own self-abandonment to the barbarism and nihilism of the Third *Reich* and by two megalomaniac bids for world domination in one generation, the Germans have done their best to blot out Europe. If, today, it is merely halved, this is not their merit. They would be well advised to leave it to those who have saved them from being totally overrun by the Soviet steam-roller to decide on the policy of the Atlantic Union towards Eastern Germany and Eastern Europe.

If Eastern Germany and Eastern Europe could be freed only at the cost of a third world war, this price is too high for the rest of the world. The territory of the Union in Europe and elsewhere should be strongly organised for defence, but with clear renunciation of any

by Mr Justice Roberts (formerly of the Supreme Court), Mr Patterson (formerly Secretary of War), and Mr Clayton (formerly Under-Secretary of State for Economic Affairs). To meet them they represent a distinguished but, as yet, not sufficiently wide a section of American public opinion.

From the American point of view, an Atlantic Union should be attractive on at least three grounds. First, union would transform unwanted hegemony into institutionalised leadership among equals. Secondly, union would remove for good whatever tensions may still linger in the United States that either the British Commonwealth or Western Europe still cherish the dangerous illusion of becoming a potential Third Force between the two giant powers. An Atlantic Union would effectively rid the United States of the ghost of such isolationism which reminds Americans uncomfortably of their own major failing in the inter-war period. Thirdly, only the maximum integration of the Western world can give the United States that superiority which, in a split world, is the only guarantee uncertain though it is, of world peace built on strength.

Otherwise, without the compensating advantages of union, it might well be the lot of the United States to have to come for the third time to the rescue of an Old World run wild and of rebuilding another post-war Europe. It was well that it was the then United States Ambassador in London who said on American Independence Day 1949 'If the Fourth of July once meant independence, the compulsion of history now demands interdependence.'

For the British Commonwealth, Atlantic Union would solve three major dilemmas. An Atlantic Union would effectively stem any centrifugal tendencies in the older Dominions. It would also enable the Commonwealth to counsel with greater chance of being heard more enlightened policies to the frightened white minority in the Union of South Africa and in adjacent self-governing British colonies. Finally, an Atlantic Union would enable British foreign policy to take a more constructive lead towards further integration in Western Europe. In the setting of an Atlantic Union, the British Commonwealth as a whole could more truly fulfil the functions which, in Sir Oliver Franks' letter to Mr. Hoffman of June 21, 1950, are described as the essence of British foreign policy: 'The foreign policy of Britain rests upon and draws strength from these vital relationships with Europe, the Commonwealth, and the Atlantic community. It is the aim of British policy so to reconcile these relationships that they perpetually reinforce each other and, by their combined strengths, add vigour and resource to the free world.'

It can be argued—and with great strength—that the members of the British Commonwealth will not in any foreseeable future, be able to co-ordinate their own diverging policies sufficiently to give uniform instructions to British Commonwealth representatives in any organ of an Atlantic Union. If this view were justified, it would merely mean that, as other States did before, the members of the Commonwealth value their own sovereignty higher than the benefits to be expected from such a Union. Like the members of the constituent European Union they, too, might be expected to make corresponding sacrifices. Yet even if this were too much to expect the scheme of an Atlantic Union need not founder on this rock. So long as the principle of equal representation of each of the three constituent members is preserved, each member could have a multiple vote. This need not necessarily be cast as a *bloc* vote, and it could be left with each member to make its own arrangements for the instruction of its delegates.

The risk which the other two constituent members run that the British Commonwealth may become the arbiter between them is no greater than the possibility of either of them being the decisive third whenever there should be disagreement between the British Commonwealth and either the United States or the European Union. Actually, it is more likely that the British Commonwealth would fulfil a very different function. It would bring into the Union the assets of its own unique structure. The United Kingdom is near enough to the Continent to share some of Western Europe's most pressing anxieties. Thus, it would be likely to lend weight to justified requests of the European Union which might not be so apparent to the transatlantic members of the Commonwealth and of the Atlantic Union.

At the same time, the British Commonwealth as a unit has the breadth of outlook which comes from running a world commonwealth as a going concern. It might imbue the Atlantic Union with some of that spirit which alone can make a federation work in accordance with its appointed purposes. Moreover, the presence of the Commonwealth as a whole in the Atlantic Union would save the Union from having an exclusively white character. The Atlantic Union should not even give the appearance of being the negative white response to the awakening of the Asiatic and colonial peoples. By its inter-racial composition, it should stake its claim as a nuclear world federation which, in due course and without pressure, might grow into a federal world State. Far off as this goal may seem, nothing less is ultimately a commensurate alternative to world power politics in, or without, disguise.

POTENTIALITIES OF AN ATLANTIC UNION

At this early state of the debate, nothing would be less advisable than constitution-mongering. If the governments and peoples of the United States, of the British Commonwealth and of Western Europe want an Atlantic Union, the admittedly formidable constitutional and technical difficulties can be overcome. Where there is a will there is a way. The evolution of the British Commonwealth and the anomalies in its relations with Ireland, India and Burma are only some outstanding instances of that sovereign contempt for logic which comes from instinctive common sense, long acquired habits of tolerance and an irrepressible sense of humour, the three ingredients of political wisdom.

Once the Atlantic Union settles down to its task; once its members learn to rub shoulders with each other as parts of a greater whole, and once its peoples begin to regard themselves as proud citizens of an Atlantic community, the need for broadening the functions of the Union may soon arise. Strong enough to disdain the military threat of the Kremlin and its doom-spelling outposts in the West, the members of the Union will realise the infective nature of their constructive work. In a frightened and disillusioned age, nothing is so impressive and convincing as the living example. It generates faith, a commodity which is still rarer in the Western world than uranium or other fissionable material. The constant fight against the most potent allies of Communism in the West, poverty and remnants of racial discrimination, will constitute a continuous challenge to the Atlantic Union. With the establishment of overall political unity, the field may be cleared for new Atlantic agencies on a functional basis and for the expansion of federal competences in these spheres.

Then it will become apparent that the Western world is more than the antithesis to the Soviet colossus. Unconquerable from the outside, the Atlantic Union will be able to adopt a policy of wait-and-see towards the Soviet-controlled sector of the world. At the most, this would mean to let these systems run out their predestined course. Experience shows that, in the long run, such regimes are likely to decay from within.

When fallible mortals wield absolute power, the second and, at the latest, the third generations of their ruling classes will abuse these powers. They become corrupted, and their ideals recede into the background. Their own totalitarianism is an excellent breeding ground for that longing for freedom which oppression tends to produce in every human being. The inner histories of Italian Fascism,

German Nazism, Stalinism, Japanese militarism and of the Chiang Kai-shek regime, all bear out this lesson.

If justice, mercy, kindness, tolerance and self-sacrifice are the specific values of our Western heritage, the practice of these virtues in the Atlantic Union would constantly invite comparison. It must, however, be admitted that all these considerations may be of significance only over a somewhat prolonged period. Peoples may yearn for freedom, but it may be beyond their power to attain it. Future generations of these totalitarian serfs may be so conditioned by their masters as to be mere robots in human disguise. They may be so cut off from the Western world that they know as little about it as did an average Roman about the contemporary Chinese empire of his own time.

It may be that this view of the people's democracies is merely a typical Western caricature of the real achievements of the Eastern vanguard of world peace and civilisation. Let it be assumed that these totalitarian States do not ruthlessly suppress in the interest of mere expediency all that we believe are universal and eternal values. Be it charitably granted that the people's democracies are harsh experiments in advancing the Eastern nations at a forced pace towards a common goal. Were these benevolent dictatorships, established and maintained in the interest of the toiling masses, really to lead to greater freedom, to increased respect for the individual and to higher standards of living in these countries, then it could once more be left to time to bridge the gap between East and West. Even then, these nations may differ widely in outlook from those of the Atlantic Union. They would all, however, have one thing in common : the quest for a minimum of happiness and security. Then the time would have come for exploring the possibilities of a common denominator between East and West and the Archimedean point would have been found where to stem the trend towards unification of the world by 'natural' selection and where to break the vicious circle of world power politics.

Until then, the United Nations remains a useful sounding board to detect the first dim signs of any such changes in the Soviet world. Continued co-operation on this level with other nations inside the power orbit of the Western world, too, would be of value. It would assist in testing them for their suitability as potential members of the Atlantic Union or for other forms of less intimate associations with the Union.

Whatever the future shape of relations between East and West, it would be vital for the Union to bear constantly in mind the promise

held out in its nuclear character that it would ultimately aim at growing into a world federation. Unless it is consciously built as an open community, and unless it is imbued with the spirit of brotherhood and sacrifice, this Union, too, would quickly degenerate into another of the antagonistic groupings of power politics in disguise. It would be merely another exercise in collective folly : a new version, as ambitious as it was vain, of the eternal Tower of Babel.

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* The section on Economic Aspects was checked by Miss Susan Strange of University College, London, and those on Educational and Psychological Aspects by Dr. Charlotte Banks, also of University College, London, to both of whom I wish to express my thanks.

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Official Publishers:

Stevens & Sons, Limited, London

Founded 1934

The LONDON INSTITUTE OF WORLD AFFAIRS is a self-governing, independent research and teaching organisation for the study of world affairs.

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